FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1342835-0

Total Deleted Page(s) = 44
Page 3 ~ Referral/Consult;
Page 4 ~ Referral/Consult;
Page 5 ~ Referral/Consult;
Page 6 ~ Referral/Consult;
Page 7 ~ Referral/Consult;
Page 8 ~ Referral/Consult;
Page 9 ~ Referral/Consult;
Page 10 ~ Referral/Consult;
Page 11 ~ Referral/Consult;
Page 12 ~ Referral/Consult;
Page 13 ~ Referral/Consult;
Page 14 ~ Referral/Consult;
Page 15 ~ Referral/Consult;
Page 16 ~ Referral/Consult;
Page 17 ~ Referral/Consult;
Page 18 ~ b7E;
Page 19 ~ Referral/Direct;
Page 20 ~ Referral/Direct;
Page 21 ~ Referral/Direct;
Page 22 ~ Referral/Direct;
Page 23 ~ Referral/Direct;
Page 24 ~ Referral/Direct;
Page 25 ~ Referral/Direct;
Page 26 ~ Referral/Direct;
Page 27 ~ Referral/Direct;
Page 28 ~ Referral/Direct;
Page 29 ~ Referral/Direct;
Page 30 ~ Referral/Direct;
Page 31 ~ Referral/Direct;
Page 32 ~ Referral/Direct;
Page 33 ~ Referral/Consult;
Page 34 ~ Referral/Consult;
Page 35 ~ Referral/Consult;
Page 36 ~ Referral/Consult;
Page 37 ~ Referral/Consult;
Page 38 ~ Referral/Consult;
Page 39 ~ Referral/Consult;
Page 40 ~ Referral/Consult;
Page 41 ~ Referral/Consult;
Page 153 ~ Referral/Consult;
Page 154 ~ Referral/Consult;
Page 155 ~ Referral/Consult;
Page 156 ~ Referral/Consult;
Page 157 ~ Referral/Consult;

XXXXXXXXXXXXXXXXXXXXXXX
X Deleted Page(s) X
X No Duplication Fee X

X For this Page X
XXXXXXXXXXXXXXXXXXXXXXXX

Index #5
1, 2, 4, 5, 6, 7, 8,

COPY

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

PETITION FOR A WRIT OF MANDAMUS

I

Jurisdiction and Venue

1. This is an action for mandamus over which this Court has jurisdiction pursuant to 28 U.S.C. § 1361. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(e).

II

Parties

2. Petitioner INSLAW, Inc. ("INSLAW") is a Delaware corporation with its principal place of business in the District

of Columbia. Its business is designing, manufacturing, marketing and maintaining computer software.

3. Respondent Dick Thornburgh is the Attorney General of the United States.

4. Respondent United States Department of Justice ("DOJ" or "the Department") is an agency of the United States government.

III

Facts

5. INSLAW was founded in January, 1973 by William A. Hamilton as a nonprofit corporation to conduct research and development in the field of criminal justice. With the help of grants from the Law Enforcement Assistance Administration ("LEAA"), a division of the Department, INSLAW developed case-management software called the Prosecutor's Management Information System ("PROMIS"). Congress decided in 1980 to terminate the LEAA. PROMIS was then being used in District Attorneys' offices in large metropolitan areas throughout the United States and on a pilot basis in two large U.S. Attorneys' offices. So as to make possible the continuation both of service to PROMIS users and the funding of improvements in the software, Hamilton founded in January, 1981 a for-profit corporation with the same acronym. The new corporation acquired from the nonprofit corporation substantially all of its assets, except for PROMIS itself, which was in the public domain. Between January, 1981 and March, 1982

the new INSLAW developed a substantially enhanced version of PROMIS, which has since been further improved. This version of PROMIS is proprietary. At no time during the period addressed by this petition has any other software performed the function of case management as well as it is performed by PROMIS.

6. In March, 1982 INSLAW entered into a three-year, $10 million contract with DOJ to introduce the public-domain version of PROMIS into the United States Attorneys' Offices. Claiming that INSLAW had no title to the enhanced version of PROMIS, DOJ officials threatened to withhold payments under the contract unless INSLAW turned it over to DOJ. On the advice of its own procurement counsel, DOJ modified its contract with INSLAW in April, 1983 and agreed to pay license fees to INSLAW if and when DOJ decided to use the enhanced version of PROMIS in the U.S. Attorneys' Offices.

7. In May, 1983 DOJ officials initiated a series of contract disputes with INSLAW. These were sham disputes concocted as pretexts for withholding month by month increasingly larger amounts of money due under the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW, thus forcing INSLAW to seek Chapter 11 protection in the Bankruptcy Court for the District of Columbia.

8. In June, 1986 INSLAW brought suit in the Bankruptcy Court charging DOJ with violations of the automatic stay entered on February 7, 1985, including, inter alia, the assertion of control over INSLAW's proprietary version of PROMIS

and the failure to take positive steps to curb the persistent efforts of certain DOJ officials to inflict harm on INSLAW. This suit was tried in the summer of 1987. On January 25, 1988 the Bankruptcy Court rendered judgments in favor of INSLAW in the amount of $6.8 million plus counsel fees. The Court's principal findings are attached hereto as Exhibit A. The most important of these was that DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." The Court also found that the main instigator of this wrongdoing was the PROMIS Project Director, C. Madison ("Brick") Brewer, a former INSLAW employee fired by Hamilton several years earlier; that DOJ officials, acting on a decision "consciously made at the highest level," ignored plain indications of vindictiveness toward INSLAW on the part of Brewer and his subordinates; and that a reason for this disregard was that D. Lowell Jensen, who rose from Assistant Attorney General to Deputy Attorney General between 1981 and 1986, was biased against INSLAW.

9. Among the Bankruptcy Court's additional findings were that DOJ officials, having driven INSLAW into Chapter 11, then "unlawfully, intentionally and willfully sought to cause the conversion of INSLAW's Chapter 11 reorganization to a Chapter 7 liquidation case without justification and by improper means" and that this attempted conversion was masterminded by Thomas Stanton, Director of DOJ's Executive Office for United States Trustees.

10. On November 22, 1989, this Court affirmed the Bankruptcy Court's judgments and, in an accompanying memorandum, stated that "after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court." This Court also found it "strikingly apparent . . . that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work." Even the undisputed facts, the Court added, drew it to "the same conclusion reached by the bankruptcy court; the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

11. The combination of high-level hostility and lower-level vindictiveness does not sufficiently account for the persistence and tenacity of the attempts to wrest control of PROMIS from INSLAW. These began with DOJ's refusal to recognize INSLAW's ownership of enhanced PROMIS. Then came an offer from Hadron, Inc., a software company controlled by a long-time friend of Edwin Meese, to buy INSLAW. When Hamilton refused the offer, the chairman of Hadron said, "We have ways of making you sell." Soon thereafter a New York-based venture capital firm, following a meeting with a businessman who claimed to have access to the highest levels of the Reagan administration, tried to induce the

Hamiltons to turn over to the firm their voting rights in INSLAW's common stock. When the contract disputes forced INSLAW to seek the protection of Chapter 11, Stanton attempted to push INSLAW into liquidation. After this failed, DOJ officials enccuraged a Pennsylvania-based computer services company to launch a hostile takeover bid for INSLAW.

12. On information and belief, these attempts to acquire control of PROMIS were linked by a conspiracy among friends of Attorney General Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions. Among the facts pointing to the existence of this conspiracy are the following:

(a) Between 1958 and 1966, Edwin Meese and D. Lowell Jensen served together in the Alameda County, California, District Attorney's office. From 1966 to 1974 Meese was a key aide to Governor Ronald Reagan. From 1970 to 1975 Dr. Earl Brian served in Governor Reagan's Cabinet. In January, 1981 Meese became Counsellor to President Reagan. In 1981 and 1982 Brian served in the White House as the chairman of a task force which reported to Meese.

(b) When Meese joined the Reagan administration, Brian was the controlling shareholder in Biotech Capital Corporation. Biotech controlled Hadron, Inc., a company which specialized in integrating computer-based information

management systems. This was the company which tried to buy INSLAW.

(c) Mrs. Meese bought stock in Biotech's first public offering with money borrowed from Edwin Thomas, soon to be an aide to her husband. Brian lent Thomas $100,000 for the purchase of a house in Washington. Mrs. Meese later bought stock in American Cytogenetics, another Brian company.

(d) In June, 1983 a DOJ "whistleblower" warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install PROMIS in every litigation office of DOJ. According to a statement made to Judge Jane Solomon of the Civil Court of the City of New York, Stanton's attempt to force INSLAW into liquidation was part of a "conspiracy to get the INSLAW software." Several high-level DOJ officials spoke of DOJ's determination to "get" or "bury" INSLAW. One DOJ employee said that Jensen was behind this effort. A second attributed the award to Hadron of a $40 million computer services contract for litigation support in the Lands Division to the influence of a Deputy Assistant Attorney General with close ties to Meese. Other DOJ employees connected Meese, Brian, and Hadron with the harassment of INSLAW and the attempt to acquire PROMIS.

13. When Meese became Attorney General in February 1985, he and Jensen took steps to meet DOJ's long-recognized need

for comprehensive case-management systems. A request for proposals was announced on May 25, 1986. The initial cost estimates for this procurement, code-named "Project Eagle," exceeded $200 million; options to expand the contract could increase the cost to three or four times this amount. The request for proposals contained no provision for the acquisition or development of case-management software. The Project Eagle computers would be largely wasted without this software. Undisclosed provisions of the Project Eagle procurement did in fact mandate technical specifications for the use of PROMIS. DOJ's failure to publish a specific requirement for case-management software implied an understanding that the winner of the Project Eagle contract would be an entity which already controlled such software, i.e., PROMIS.

14. In late April, 1988, Ronald LeGrand, Chief Investigator of the Senate Judiciary Committee, telephoned Hamilton. LeGrand said that he was calling at the request of an unnamed senior official in DOJ whom he had known for 15 years and regarded as completely trustworthy. According to this official, the INSLAW case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." The official asked LeGrand to inform the Hamiltons that the Justice Department had been compromised on the INSLAW case at every level, and that Jensen had engineered INSLAW's problems right from the start. The official also said that senior career officials in the Criminal Division knew all about this

malfeasance but would not disclose what they knew except in response to a subpoena and under oath. LeGrand has since told Hamilton and others that his informant would come forward only if assured of protection against reprisal.

15. The factual basis for the foregoing allegations is detailed in the affidavit of William A. Hamilton appended hereto as Exhibit B. Respondents are aware of most of these facts. Some are set forth in the Bankruptcy Court's findings of fact; some are contained in a written statement furnished to the Public Integrity Section of DOJ's Criminal Division (the "Section") in February, 1988 by William Hamilton and his wife; many are recapitulated and supplemented in a letter of May 11, 1989 to Attorney General Thornburgh from Elliot Richardson, one of INSLAW's counsel, which is appended hereto as Exhibit C.

16. On May 4, 1988 the Section informed INSLAW that it would investigate some of the allegations made by the Hamiltons and their counsel. On July 18, 1989, the Section notified INSLAW that its investigation of INSLAW's allegations "has been completed and that prosecution has been declined, due to lack of evidence of criminality." The Section had not in fact conducted a comprehensive, thorough, or credible investigation. INSLAW has stayed in touch with all of the individuals who have furnished information on which the allegations made in this petition are based and since December 10, 1989 has communicated with all but four of them. Each has again been asked whether or not any anyone representing DOJ has communicated or attempted to communicate

with her or him. The only one who responded affirmatively is Judge Jane Solomon. On December 11, 1989, LeGrand told INSLAW that DOJ had not to date made any attempt to obtain from him the identity of his informant. Although William Hamilton's detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, DOJ has never sought to interview him. On information and belief, DOJ has not attempted to obtain relevant documents, correspondence, notes, appointment calendars, or telephone logs from any of the individuals or entities identified in Exhibit B and has ignored the leads called to its attention in Exhibit C.

17. Respondents have a clear duty under the Constitution and laws of the United States to take care that the laws are faithfully executed. This duty embraces responsibilities both to enforce the criminal laws and to conduct civil litigation fairly. Respondents' duty to enforce the criminal laws obliges them, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. Respondents' duty of fairness toward citizens with whom they are engaged in litigation requires them to develop a full and fair record and to refrain from instituting or continuing litigation that is demonstrably unfair. By failing and refusing to conduct a sufficient investigation in this matter, respondents have breached and neglected these duties in a manner

that cannot reasonably be defended as falling within the legitimate scope of their discretion.

18. The Department's failure and refusal to conduct an adequate criminal investigation or to examine conscientiously the merits of INSLAW's contract claims has forced INSLAW to retain lawyers and private investigators and to expend countless hours of its staff's time in an effort to discover information that would have been obtained by respondents if they had properly performed their duties. Respondents' insistence, in spite of court orders to the contrary, that INSLAW is in the wrong has delayed the vindication of INSLAW's performance under the contract. This delay has wrongfully damaged INSLAW's reputation and has resulted in an irreparable loss of both public and private sector contracts and opportunities to obtain other business, to make additional improvements in its software, to maintain the software currently being utilized by 42 U.S. Attorneys' Offices, and to provide software to other units of the Department. INSLAW's burden has been increased by respondents' obstructive tactic in obtaining a court order denying INSLAW access to subpoena power and discovery proceedings while the government's appeal from the Bankruptcy Court judgment was pending. Even after this order has been lifted, respondents' failure to carry out their duties will continue to cause further injury to INSLAW in all the above-mentioned ways. Moreover, while neglecting to investigate their own wrongdoing, respondents sought and obtained court authority for the government to audit

for the eighth time INSLAW's performance under the PROMIS contract. This redundant audit has diverted the time and energy of INSLAW's management from the effort to rebuild the company and has forced INSLAW to incur significant additional legal and accounting expenses.

19. INSLAW has exhausted all the available administrative means of inducing respondents to conduct a fair and thorough investigation. Petitioner requested the appointment of an independent counsel pursuant to the Ethics in Government Act; this request was denied on May 4, 1988. INSLAW's attempt to stimulate the Public Integrity Section to take appropriate action ended with the Section's letter of July 18, 1989 declining prosecution. INSLAW's counsel wrote the Department on August 10, 1989 calling attention to the inadequacies of the Section's purported investigation, but DOJ refused to reopen the matter. INSLAW then sought review by the Special Division of the Circuit Court of Appeals for this District of respondents' failure to appoint Independent Counsel, but the Division concluded that it lacked jurisdiction over this request. DOJ has never replied to Exhibit C. Respondents possess investigative resources and powers vastly more extensive than those available to INSLAW but have resisted every effort to persuade them to make adequate use of those resources. Only respondent Thornburgh can assure DOJ employees otherwise willing to tell the truth that their doing so will not cost them their jobs. Until and unless respondents are ordered to carry out a proper investigation, INSLAW will continue

to be the victim of their persisting unfairness. Petitioner has no adequate remedy other than the relief hereby sought.

IV

Claim for Relief

20. Petitioner realleges and incorporates herein by reference the allegations in paragraphs 1 through 19 as if fully set forth herein.

21. DOJ has failed and refused to pursue the specific factual findings of the Bankruptcy Court, since affirmed by this Court, that DOJ officials "took, converted, stole" INSLAW's computer software product through "trickery, fraud and deceit."

22. DOJ has failed and refused to investigate the additional allegations of serious malfeasance on the part of DOJ officials and others made by INSLAW and supported by INSLAW's detailed and credible submissions to the Department.

23. DOJ's decision to forego and refuse a serious investigation into the Bankruptcy Court's findings and INSLAW's additional charges reflects the direct and irreconcilable conflict of interest which plagues DOJ's exercise of its investigative and prosecutorial functions in this matter.

24. The evidence assembled by INSLAW cries out for a comprehensive, thorough, and hardhitting investigation going beyond what INSLAW has been able to do with its own limited resources and drawing upon the full array of DOJ's legal powers and professional skills. INSLAW's allegations are more than

sufficient to call upon DOJ to fulfill its responsibilities toward the firm and impartial enforcement of the criminal law and the fair assessment of INSLAW's claims.

25. DOJ has not carried out the aforesaid responsibilities. It has not conducted the kind of investigation that would be necessary in order to determine whether or not DOJ officials were part of a conspiracy to destroy INSLAW. DOJ's refusal to do so is arbitrary and capricious and contrary to the public good. It has thus abused its discretion in a fashion causing serious harm to petitioner and thereby entitling petitioner to the extraordinary relief herein requested.

WHEREFORE, your petitioner prays that this Court issue an order in the nature of mandamus:

(i) compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW;

(ii) requiring respondents to place direction of the investigation in the hands of an attorney who has had no previous involvement in the case;

(iii) prohibiting any individual who participated in any previous purported investigation of these matters from participating in the Court-ordered investigation; and

(iv) directing respondents to submit to the Court from time to time reports of their progress in the Court-ordered investigation and, upon its completion, a final report.

Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By: Elliot L. Richardson

Elliot L. Richardson
D.C. Bar No.: 308718
1825 Eye Street, N.W.
Washington, D.C. 20006
(202) 835-7500

William E. Jackson

William E. Jackson
D.C. Bar No.: 110692
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Attorneys for Petitioner
INSLAW, Inc.

Of Counsel:

Charles R. Work

Charles R. Work
D.C. Bar No.: 61101
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
(202) 887-8000

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

TABLE OF CONTENTS

TABLE OF CASES, STATUTES & OTHER AUTHORITIES

Cases

Constitution of the United States

Statutes

Other Authorities

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT
OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

Petitioner, INSLAW, Inc. ("INSLAW"), respectfully submits this memorandum in support of its petition, pursuant to 28 U.S.C. § 1361, dated December 22, 1989, for a writ of mandamus directing respondents, Attorney General Dick Thornburgh and the United States Department of Justice (the "Department"), to conduct a fair and thorough investigation of the matters alleged in the petition and its attachments and to assign responsibility for that investigation to individuals who have had no previous involvement with those matters.

STATEMENT OF THE FACTS AND THE NATURE OF THE CASE

INSLAW is a case-management software company founded and managed by William A. Hamilton and his wife Nancy. In an action brought in the United States Bankruptcy Court for the District of Columbia, INSLAW charged the Department with unlawfully attempting to destroy INSLAW and take over its case management software. In that action, the Court found that Department officials "took, converted, stole" INSLAW's software through "trickery, fraud, and deceit." Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Sept. 28, 1987). After subsequent hearings, the Court awarded INSLAW $6.8 million in damages. Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Feb. 1, 1988).

The Department appealed to this Court. This Court affirmed the Bankruptcy Court judgments, noting:

> It is sufficient to state that after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court.

United States v. Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 37 (D.D.C. Nov. 22, 1989). The Court added that even the undisputed facts compelled it to draw "the same conclusion reached by the bankruptcy court; the government acted

willfully and fraudulently to obtain property that it was not entitled to under the contract." Id. at 40.

The Bankruptcy Court found that the Department's attempt to destroy INSLAW was manipulated by the Department's contract manager, a discharged INSLAW employee whose vindictiveness should have been curbed by his superiors. Later-discovered information points to an even uglier scheme in which friends of the then Attorney General sought to take advantage of their relationship with him in order to obtain a lucrative contract for the automation of the Department's litigating activities. INSLAW's case-management software was essential to this scheme, and to acquire it the conspirators resorted to unscrupulous means, up to and including "trickery, fraud, and deceit." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). INSLAW submitted evidence of this scheme to the Department in February, 1988 and supplied corroborative information, much of it obtained from present and former Department employees, in May, 1989.

The Bankruptcy Court findings should in themselves have spurred the Department to take swift corrective action. It was foreseeable, however, that this would not only expose widely ramified criminal conduct on the part of Departmental employees but also make the Department liable for punitive and consequential damages much larger than the $6.8 million already awarded. The less the Department knew of the facts, the more easily it could rationalize the nonperformance of duty and minimize these risks. The Department could not completely duck an investigation, but it

might get away with a superficial one. Taking that chance, the Public Integrity Section of the Criminal Division initiated a cursory review of INSLAW's charges but made no serious attempt to determine their validity.

Respondents have a duty both to enforce the criminal laws and to be fair to civil litigants. It is scarcely conceivable that they will challenge this proposition. In opposing INSLAW's petition, they will thus be forced to argue that when the Public Integrity Section closed its so-called "investigation," the Section was acting within the scope of its discretion. This argument can be supported only on one of two grounds: either (1) that the facts alleged in INSLAW's petition are not true or (2) that these facts do not add up to a showing of wrongdoing sufficient to compel a thorough investigation. Neither contention is sustainable.

Respondents would be in a position to challenge the truth of INSLAW's allegations only if they had investigated them. At the very heart of INSLAW's petition, however, is the allegation that the Department has not made a serious effort to find out whether or not INSLAW's factual allegations are true. Corroborated as these allegations are by the testimony of the Department's own present and former employees, they will be difficult to overcome. For respondents to contend, on the other hand, that INSLAW's factual allegations are insufficient on their face to portray an abuse of discretion would trivialize both the Bankruptcy Court's findings of serious wrongdoing, which this

Court has affirmed, and the even more sinister malfeasance adumbrated by this petition and its attachments.

Being unable either to discredit INSLAW's allegations or to diminish their impact, the Department may then fall back on the assertion that the adequacy of its investigations, whether for the purpose of criminal prosecution or of civil litigation, is unreviewable as a matter of law. But that, as we shall point out below, is a position that has no support in the relevant cases.

The petition and its attachments lay out in detail the shortcomings of the Department's purported investigation. If the Department had done no more than match INSLAW's own investigative effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information that INSLAW obtained. The Department did not do any of these things. On the contrary, it wound up a superficial inquiry without contacting more than one of INSLAW's key witnesses, without following up any of the leads furnished to it by INSLAW, and without attempting to obtain the most obviously relevant documents and correspondence. Given these gross deficiencies, respondents cannot plausibly claim that they fulfilled either their duty to enforce the criminal laws or their duty of fairness in the conduct of civil litigation.

INSLAW does not contend that the facts it has assembled are sufficient to prove a criminal conspiracy. It does contend, however, that these facts, coupled with the Bankruptcy Court's findings, create an imperative need for a thorough, hardhitting,

and impartial investigation. Despite a great deal of time and expense devoted to developing a full explanation of the Department's malfeasance, INSLAW has not been able to pursue all the indicated leads, talk to all the available witnesses, or examine all the relevant documents. And even after the restraining order that prevented INSLAW from conducting discovery proceedings has been lifted, INSLAW still will not have means of obtaining critically important testimony anywhere near comparable to those at the command of the Department.

Against this background, the Department's statement of July 18, 1989 that its investigation had been terminated "due to lack of evidence of criminality" cannot be accepted at face value. The termination is better explained on the basis that the Department felt trapped by a conflict of interest. At the time of the statement the Civil Division was resisting INSLAW's claims on grounds which, had they been thoroughly investigated by the Criminal Division, might well have been found to be lacking in merit. The Department's duty to investigate the charges of a criminal conspiracy involving its own employees clashed with its interest in minimizing or defeating the civil damage claims against the Department. The Bankruptcy Court's findings and INSLAW's allegations impugned the Department's integrity. They implicated senior colleagues of the investigators themselves. Departmental pride was at stake. Rather than face the facts, it was easier to look for rationalizations such as `the evidence did not add up to the conclusive proof of crime,' `everybody does

favors for political friends,' or `the Hamiltons are suffering from a persecution complex.'_ As the Bankruptcy Court observed, respondents' reaction was "to circle the wagons." In re Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 1038 (Bankr. D.D.C. June 12, 1987).

Briefly stated, these are the circumstances under which INSLAW seeks from this Court a writ of mandamus directing respondents to conduct a fair and thorough investigation into the facts underlying the allegations contained in its petition and the attachments thereto. The legal basis for this request is set forth in the remainder of this memorandum.

ARGUMENT

I

MANDAMUS IS THE APPROPRIATE REMEDY

United States district courts have original jurisdiction of any action in the nature of mandamus to compel officers or employees of the United States or any agency of the United States to perform a duty owed to a plaintiff. 28 U.S.C. § 1361 (1982). The remedy of mandamus is available if (1) plaintiff has a clear right to relief, (2) defendant has a clear duty to act, and (3) there is no other remedy available to plaintiff. Homewood Professional Care Center, Ltd. v. Heckler, 764 F.2d 1242, 1251 (7th Cir. 1985); Maier v. Orr, 754 F.2d 973, 983 (Fed. Cir.), reh'g denied, 758 F.2d 1578 (Fed. Cir. 1985); Ganem v. Heckler, 746 F.2d 844, 852 (D.C. Cir. 1984); Piledrivers' Local Union No. 2375 v. Smith, 695 F.2d 390, 392 (9th Cir. 1982); Carter v. Seamans, 411 F.2d 767, 776 (5th Cir. 1969), cert. denied, 397 U.S. 941 (1970). See also Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1980).

To justify a court order compelling an officer or agency of the executive branch to perform a duty, it must be clear that the non-performance of the duty cannot be defended as falling within the legitimate discretion of the officer or agency. Mandamus is the indicated remedy, therefore, where "[f]ederal officials are acting contrary to law, abusing their discretion and acting outside the limits of their permissible discretion . . . ." NAACP v. Levi, 418 F. Supp. 1109, 1117 (D.D.C. 1976). That was a

case in which plaintiffs alleged, as we allege, that the Department of Justice had abused its discretion by conducting an investigation that was "superficial, less than thorough and meaningless." Id. at 1113. The government's motion to dismiss the complaint was denied.

Respondents' failure in the present case to perform legally mandated duties provides at least as compelling a justification for judicial intervention as the instances of nonperformance typically redressed by mandamus. E.g., Roaring Springs Assocs. v. Andrus, 471 F. Supp. 522 (D. Or. 1978) (on petition of private landowners, Secretary of Interior ordered to remove free-roaming horses from landowner's property); Caswell v. Califano, 435 F. Supp. 127 (D. Me. 1977), aff'd, 583 F.2d 9 (1st Cir. 1978) (on petition of affected beneficiaries, Secretary of Health, Education, and Welfare ordered to end delays in scheduling administrative hearings on eligibility for disability benefits); McNutt v. Hills, 426 F. Supp. 990 (D.D.C. 1977) (upon proof of blind employee's claim, mandamus would be appropriate to compel Secretary of Housing and Urban Development to meet affirmative obligations to combat discrimination against mentally handicapped). In every case the controlling question is whether the official action or failure to act, as the case may be, is so lacking in any tenable justification as to be impossible to characterize as a defensible performance of duty.

Since performance of the duty to be fair and to enforce the criminal law is an executive branch function, the judiciary is

generally reluctant, and properly so, to grant relief to private litigants who directly challenge prosecutorial discretion. For a court to substitute its own judgment for that of the Department of Justice on the question of whether or not an individual should be prosecuted would self-evidently encroach upon the separation of powers provided for in Article II, Section 3 of the Constitution. Newman v. United States, 382 F.2d 479, 481 (D.C. Cir. 1967); United States v. Cox, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935 (1965). See Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 863 (D.C. Cir. 1981).

Drawing on these generalizations, respondents may argue that for this Court to order them to conduct a fair and impartial investigation will usurp their "prosecutorial discretion." There can be no such usurpation, however, where the failure to perform a prosecutorial duty is the consequence not of legitimate discretion, but of discrimination, conflict of interest, obstruction of justice, or sheer neglect. In those situations the court order -- far from usurping an executive function -- merely requires the function to be carried out. See NAACP v. Levi, 418 F. Supp. at 1116. As the Court of Appeals for this Circuit has observed, "the decisions of this court have never allowed the phrase 'prosecutorial discretion' to be treated as a magical incantation which automatically provides a shield for arbitrariness." Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 673 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1972). See Perkins v. Elg, 307

U.S. 325, 349-50 (1939).

The distinction between the executive branch's duty to prosecute and the judicial branch's power to enforce observance of that duty was sharply delineated in Nader v. Saxbe, 497 F.2d 676 (D.C. Cir. 1974). Plaintiffs there sought a writ of mandamus to compel the Attorney General of the United States and the United States Attorney for the District of Columbia to initiate criminal prosecutions against alleged violators of the Federal Corrupt Practices Act. Although finding that the plaintiffs lacked standing, the Court of Appeals took issue with the District Court's conclusion that prosecutorial decision-making is wholly immune from judicial review and pointed out that mandamus is the appropriate remedy where "no legitimate consideration informed the prosecutor's decision not to prosecute the individual in question." Id. at 679 n.18.

No legitimate consideration informed respondents' decision not to investigate INSLAW's allegations. Accordingly, a writ of mandamus is the appropriate means of compelling respondents to fulfill the duties and responsibilities incumbent upon them as a matter of law.

II

INSLAW HAS A CLEAR RIGHT TO RELIEF

INSLAW's civil claims against the Department of Justice rest on the same evidence that points to the existence of a criminal conspiracy to destroy INSLAW and take over its software. The Department has defended itself against INSLAW's claims with

extraordinary zeal and tenacity. It continues to do so without ever having conducted an investigation of INSLAW's allegations sufficient to enable it to make a fair assessment of the merits of those claims, and thus to evaluate the extent of its potential liability to INSLAW.

As the next section of this memorandum makes clear, the Department had -- and still has -- a duty to conduct such an investigation. Insofar as it is a duty compelled by the obligation to be fair in the conduct of civil litigation, it is a duty owed to petitioner. Petitioner has been harmed by the Department's failure to fulfill this duty. INSLAW therefore has a clear right to relief, and thus satisfies the first requirement of entitlement to mandamus. See cases cited supra at 8-9.

The Department's neglect of its duty of fairness has harmed and continues to harm INSLAW in three clearly demonstrable ways: (1) it has forced INSLAW to expend substantial amounts of money and other corporate resources litigating its civil claims against the Department; (2) it has caused INSLAW to lose important business opportunities by delaying the vindication of INSLAW's performance under its contract with the Department; and (3) it has forced INSLAW to devote a vast amount of time, money, and energy to investigative efforts which the Department itself should have conducted and to which the Department could have brought far more adequate investigative resources. Indeed, the present situation entails a right to relief at least as compelling as those deemed sufficient in other cases involving a government agency's respon-

sibility toward a plaintiff's access to information. Cf. Ganem v. Heckler, 746 F.2d at 852-54 (on petition of non-resident Iranian, Secretary of Health and Human Services ordered to determine content of Iranian law for purposes of awarding Social Security benefits); American Friends Serv. Comm. v. Webster, 485 F. Supp. 222, 227 (D.D.C. 1980), aff'd in part and rev'd in part, 720 F.2d 29 (D.C. Cir. 1983) (FBI enjoined from destroying documents that might be relevant to plaintiffs' claims).

INSLAW's right to relief is reinforced by the criteria normally applied to standing in general. A party has standing if it alleges "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751, reh'g denied, 468 U.S. 1250 (1984). The economic harm suffered by INSLAW is itself sufficient to satisfy this requirement, as it "is beyond cavil that the deprivation of one's property is a sufficient injury to satisfy the injury in fact requirement." Cardenas v. Smith, 733 F.2d 909, 913 (D.C. Cir. 1984).

III

RESPONDENTS HAVE A CLEAR DUTY TO ACT

Article II, Section 3 of the Constitution directs the President to "take care that the Laws be faithfully executed." Although the statutes creating the position of Attorney General and making him head of the Department of Justice (28 U.S.C. §§ 503, 509) do not spell out his responsibilities, it has been

authoritatively declared that the Attorney General is "the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offences [sic], be faithfully executed." Ponzi v. Fessenden, 258 U.S. 254, 262 (1922). See also United States v. Cox, 342 F.2d at 171. The Court in Ponzi traced the Attorney General's responsibility for the execution of laws to such venerable cases as Kern River Co. v. United States, 257 U.S. 147 (1921); In re Neagle, 135 U.S. 1 (1890); and United States v. San Jacinto Tin Co., 125 U.S. 273 (1888). This responsibility has been delegated to him by the President pursuant to the latter's "authority to commission all the officers of the United States, and, by and with the advice and consent of the Senate, to appoint the most important of them and to fill vacancies." In re Neagle, 135 U.S. at 63.

The judicial precedents thus supply formal support for the universal assumption that it is respondents' duty to enforce the criminal laws of the United States and to represent the United States in civil litigation. This clear duty to act fulfills the second requirement of petitioner's entitlement to mandamus.

A. Respondents' Duty to Conduct Civil Litigation Embraces a Duty to Be Fair

Respondent's duty to see to it that the laws are faithfully executed carries with it a special obligation toward maintaining public confidence in the fairness of the administration of justice. In the words of the Supreme Court:

> Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts."

Brady v. Maryland, 373 U.S. 83, 87 (1963). The quoted inscription is as true, of course, for civil litigation as for criminal proceedings: both belong to "the federal domain."

Courts have long looked to Department of Justice officials for exemplary conduct as agents of the government. See Owen v. City of Independence, 445 U.S. 622, 651, reh'g denied, 446 U.S. 993 (1980); Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), overruled, Katz v. United States, 389 U.S. 347 (1967). The public has a right to expect conscientious service from government counsel. Meza v. Washington State Dep't of Social & Health Servs., 683 F.2d 314, 315 (9th Cir. 1982) (district court held to abuse its discretion by excusing neglect of State Assistant Attorney General).

In the case of criminal proceedings, federal courts can enforce the duty to be fair by ordering a new trial. E.g., Berger v. United States, 295 U.S. 78, 88 (1935) (unfair cross-examination of witnesses and unfair argument); King v. United States, 372 F.2d 383, 396 (D.C. Cir. 1966) (unfair cross-examination); Griffin v. United States, 183 F.2d 990, 993 (D.C. Cir. 1950) (failure to disclose evidence useful to defense). See also Young v. United States ex rel. Vuitton, 481 U.S. 787 (1987);

Campbell v. Marshall, 769 F.2d 314 (6th Cir. 1985), cert. denied, 475 U.S. 1048 (1986). In civil proceedings, mandamus can effectively serve the same end. See cases cited supra at 8-9.

Respondents' duty of fairness in the conduct of a lawsuit is more exacting than that expected of an ordinary litigant. Indeed, observance of this special degree of responsibility is expressly commanded by the Department of Justice Standards of Conduct. All Department of Justice employees are directed to "[c]onduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them . . . ." Department of Justice Standards of Conduct, 28 C.F.R. § 45.735-2(a) (1988). Attorneys are also instructed to be guided in their conduct by the Code of Professional Responsibility of the American Bar Association. Id. § 45.735-1(b). The Code specifically speaks to the standard of fairness to be expected of government lawyers:

> A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

Code EC 7-14 (1989).

Respondents have "discretionary power relative to" the INSLAW litigation. Their responsibility to develop "a full and fair record" applies to the pretrial as well as to the trial stage of the litigation. Having failed to fulfill this responsibility, they are "continuing litigation that is obviously unfair." The Code of Professional Responsibility requires, therefore, that respondents make a serious effort to find out whether or not INSLAW's allegations are true, and this requirement is reinforced by the fact that respondents are in a far better position than INSLAW to do so. The unfairness that has resulted from the neglect of this responsibility is compounded by the continuing harm thereby imposed on INSLAW.

Given respondents' persistent refusal to take the action demanded by the duty of fairness, mandamus is the only practical means of redress.

B. Respondents' Duty to Enforce the Criminal Laws Embraces the Duty to Investigate

Referring to United States Attorneys, the Supreme Court has laid down standards that apply to all Federal prosecutors:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Berger v. United States, 295 U.S. at 88 (emphasis added). See also Young v. United States ex rel. Vuitton, 481 U.S. at 803; Marshall v. Jerrico, Inc., 446 U.S. 238, 249 (1980).

In order to see to it that "guilt shall not escape," respondents are obliged, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. As this Court has said, a prosecutor "has an affirmative responsibility to investigate prudently suspected illegal activity when it is not adequately pursued by other agencies." NAACP v. Levi, 418 F. Supp. at 1115 (citing A.B.A. Standards Relating to the Administration of Criminal Justice, The Prosecution Function, Part III (1974)).

Of course, respondents' duty to enforce the criminal laws is not a duty owed to INSLAW in the same degree that they owe INSLAW a duty of fairness in defending the United States against INSLAW's claims. That is a consideration, however, that bears only on the question of INSLAW's standing to seek mandamus, not on the question of the appropriateness of mandamus as a means of compelling respondents to carry out their duty to enforce the criminal laws through a proper investigation of INSLAW's allegations. Given INSLAW's standing in this Court to seek relief from respondents' unfairness in the civil litigation, the issue of their failure to enforce the criminal laws is also before the Court. Cf. Nader, supra, cited at 11; Levi, supra, cited at 8-9. If, therefore, this Court finds that they have been derelict in

this duty, it can properly order them to carry it out.

Respondents' duty to pursue the evidence in the matter of INSLAW has three separate components. The first consists in their obligation to decide upon the appropriate course of action. The Bankruptcy Court for this District found that "the Department of Justice took, converted, stole, INSLAW's enhanced PROMIS by trickery, fraud, and deceit . . . ." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). This Court has affirmed that finding. United States v. Inslaw, Inc., slip op. at 44. INSLAW has adduced additional evidence of criminal conduct on the part of Department officials. These facts thrust upon respondents a duty to put aside concerns of institutional self-interest and follow the evidence wherever it may lead. Until and unless they do that, they cannot properly determine what action is necessary.

The second component derives from respondents' possession of a unique array of investigatory powers and resources. Respondents can, and INSLAW cannot, authorize electronic surveillance, initiate undercover operations, compel immunized testimony, rely on unsympathetic informants and accomplice witnesses, and call upon a grand jury's investigative powers. A Senate subcommittee which looked into the INSLAW situation learned that there were a number of DOJ employees "who desired to speak to the Subcommittee, but who chose not to out of fear for their jobs." Senate Comm. on Gov'tal Affairs, 101st Cong., 1st Sess., Allegations Pertaining to the Dep't of Justice's Handling of a

Contract With INSLAW, Inc. 58 at 46 (Comm. Print 1989). Only the Attorney General can assure these employees that their testimony will not bring reprisal. Moreover, the Department has under its direction trained and experienced investigators who have not been compromised by previous involvement in the INSLAW case. Possession of these powers and resources creates responsibility for their prudent but vigorous use.

The third component is a consequence of the impairment of INSLAW's ability to find the facts for itself which resulted from a court order denying it access to subpoena power and discovery proceedings for the 20-month period during which respondents' appeal from the Bankruptcy Court judgment was pending. The fact that respondents deliberately sought this blocking device augments their affirmative responsibility.

IV

INSLAW HAS NO OTHER ADEQUATE REMEDY

INSLAW has pursued, unsuccessfully, all the available administrative means of inducing the Department of Justice to perform its duty to conduct a fair and thorough investigation. INSLAW requested that the Attorney General appoint an Independent Counsel pursuant to the Ethics in Government Act. Respondents denied this request on May 4, 1988. INSLAW later asked the Special Division of the United States Court of Appeals for this Circuit, which is responsible for appointing Independent Counsels, to review this denial, but the Special Division found lack of

jurisdiction. In re INSLAW, Inc., Div. No. 89-2 (D.C. Cir. Sept. 8, 1989). Taking it for granted that the Department would conduct a bona fide investigation into the matter, INSLAW came forward with relevant information. Some of this information was submitted to the Public Integrity Section by the Hamiltons in February, 1988, and additional information was given to the Attorney General in May, 1989. The Department has ignored the leads supplied by INSLAW.

After the Public Integrity Section concluded its "investigation," it declined prosecution and closed the matter on July 18, 1989. INSLAW's counsel wrote the Department on August 10, 1989 complaining that this investigation had not been conducted in a thorough and impartial manner. The Department refused to reopen the matter.

Where, as a result of the exhaustion of administrative remedies, mandamus has become the only remaining source of relief, it is the appropriate remedy. See Ganem v. Heckler, 746 F.2d at 852-53; City of New York v. Heckler, 578 F. Supp. 1109, 1119 (E.D.N.Y.), aff'd, 742 F.2d 729 (2d Cir. 1984), reh'g denied, 755 F.2d 31 (2d Cir.), cert. granted, 474 U.S. 815 (1985), aff'd sub nom. Bowen v. City of New York, 476 U.S. 467 (1986); Caswell v. Califano, 435 F. Supp. at 132.

INSLAW has exhausted all available administrative remedies. It has no remaining source of relief. INSLAW has therefore satisfied the third and final requirement of entitlement to mandamus. See cases cited supra at 8.

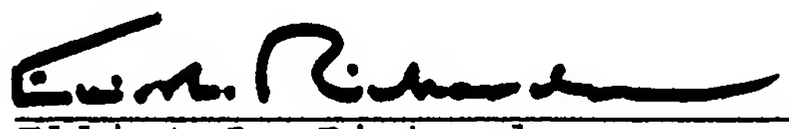
Conclusion

For all the foregoing reasons, this Court should issue a writ of mandamus compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW in accordance with the conditions proposed in petitioner's prayers for relief.

Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

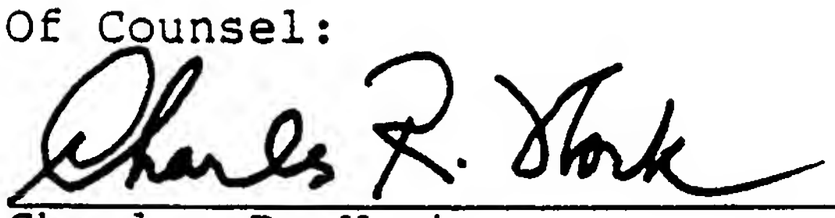
By: 

Elliot L. Richardson
D.C. Bar No.: 308710
1825 Eye Street, N.W.
Washington, D.C. 20006
(202) 835-7500

William E. Jackson
D.C. Bar No.: 110692
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Attorneys for Petitioner
INSLAW, Inc.

Of Counsel:



Charles R. Work
D.C. Bar No.: 61101
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
(202) 887-8000

1. Exhibit A is a copy of Elliot Richardson's memorandum and letter of transmittal to Robin Ross, dated October 11, 1988.

2. Exhibit B is an INSLAW press release and accompanying "agency bid protest" alleging that the Justice Department's Land and Natural Resources Division was attempting, in early 1989, to use a Request for Proposals as a thinly disguised effort to steal INSLAW's PROMIS trade secrets by contracting with former INSLAW software engineers to clone INSLAW's PROMIS software for operation on Project EAGLE computers.

3. Exhibit C is a list of the 30 witnesses whose statements are summarized in the Writ of Mandamus lawsuit. The names of four of the 30 witnesses, who have expressed fear of reprisal from the Justice Department if their identities were to be disclosed, were omitted from the list. Current business telephone numbers are included for all but two of the 26 witnesses identified by name.

4. Danny Casolaro, in 12 months of investigation of the Justice Department theft of INSLAW's PROMIS software "through trickery, fraud and deceit," spoke to the Hamiltons at least every other day.

Mr. Casolaro told the Hamiltons that he had discovered a linkage between the malfeasance against INSLAW and certain other scandals of the 1980's; i.e., the Iran/Contra Affair, the alleged October Surprise in 1980, and the Bank of Credit and Commerce (BCCI) scandal.

According to Mr. Casolaro, a small group of former covert intelligence professionals, augmented by representatives of organized crime, have profited from participation in each of these scandals. According to Mr. Casolaro, these individuals included George Pender, Richard Helms, Dr. John P. Nichols, E. Howard Hunt, Earl W. Brian, Peter Videnieks and organized crime figures from Los Angeles, California.

Mr. Casolaro also told the Hamiltons that he was investigating claims from former senior Justice Department and FBI officials that the FBI implemented pirated copies of INSLAW's PROMIS computer software as part of its Field Office Information Management System (FOIMS) in late 1988, and that the FBI had provided perjurious testimony denying this fact in U.S. District Court in the INSLAW case (see Exhibit D).

INSLAW believes that any details of Danny's investigation should be presented to an Independent Counsel because of the obvious conflict of interest on the part of the Justice Department and the FBI.

Index #'s 1, 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INSLAW, INC.,

Petitioner

v.

DICK THORNBURGH,
in his official capacity
as Attorney General of
the United States,

and

UNITED STATES DEPARTMENT OF JUSTICE,

Respondents

No. 89-____

AFFIDAVIT OF WILLIAM A. HAMILTON

WILLIAM A. HAMILTON, being duly sworn, deposes and says:

1. I am President and Chairman of the Board of Directors of INSLAW, Inc. ("INSLAW"). I have held these positions since the inception of INSLAW's business operations in January of 1981. In my capacity as President and Chairman of the Board, I am responsible for overseeing, coordinating and directing INSLAW's bankruptcy proceedings, litigation strategy, and investigative efforts regarding INSLAW's dispute with the United States Department of Justice ("DOJ"). As the individual responsible for the above described efforts, I have knowledge of the detailed facts set forth below.

A. The Bankruptcy Court's Findings of Fact

2. The U.S. Bankruptcy Court for the District of Columbia heard evidence in two trials during the summer of 1987 concerning INSLAW's allegations that DOJ officials engaged in unlawful interference with INSLAW's efforts to reorganize under Chapter 11 of the U.S. Bankruptcy Code and unlawfully exercised control over INSLAW's proprietary software. The two trials together consumed more than three weeks of hearings. On January 25, 1988, the Court rendered its judgment in favor of INSLAW and announced Findings of Fact and Conclusions of Law. Among the Court's principal findings were that:

a. DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." In March 1982, INSLAW had entered into a three-year, $10 million contract with DOJ to introduce the earlier public domain version of the PROMIS software into the U.S. Attorneys' offices. Claiming that INSLAW had no title to a subsequent version of PROMIS that INSLAW had significantly improved through the incorporation of privately-financed enhancements, DOJ officials attempted to coerce INSLAW into turning the proprietary version of PROMIS over to DOJ, without any recognition of INSLAW's property rights, by threatening to suspend timely payments of INSLAW's invoices under the contract which then accounted for a large portion of INSLAW's corporate revenues. When this attempt at coercion failed, DOJ officials modified INSLAW's contract to provide for delivery of the proprietary version of PROMIS based on a fraudulent DOJ promise to

negotiate the payment to INSLAW of license fees if DOJ decided to use the proprietary version in the U.S. Attorneys' offices. DOJ's internal procurement counsel, William Snider, had insisted that DOJ modify the contract before taking delivery of the proprietary version of INSLAW's software.

b. Having driven INSLAW into Chapter 11, DOJ officials then immediately "sought unlawfully and without justification" to force INSLAW from there into Chapter 7, i.e., liquidation. In a sworn deposition taken in March 1987, Cornelius Blackshear, then a U.S. Bankruptcy Court Judge in the Southern District of New York, testified that in 1985, when he was U.S. Trustee in that district, Thomas Stanton, Director of DOJ's Executive Office for U.S. Trustees, used political pressure in an attempt to get Harry Jones, Blackshear's First Assistant, detailed to Washington to help force the liquidation of INSLAW. Although Blackshear recanted this testimony the following day in a sworn affidavit, the Court found that the original testimony was true.[1]

c. The PROMIS Project Manager was C. Madison Brewer, a former INSLAW employee. INSLAW's President, William Hamilton, had terminated Brewer's employment for cause several years

---

[1]Information corroborating the Court's finding is contained in subparagraph 3(j) below.

prior to his recruitment by DOJ; because of that, Brewer was motivated by an intense desire for revenge against INSLAW. Brewer's vindictiveness rubbed off on other DOJ officials, including particularly Peter Videnieks, the PROMIS Contracting Officer, and influenced their unlawful actions against INSLAW.

d. DOJ officials acted on a decision "consciously made at the highest level," to ignore the evidence of vindictiveness toward INSLAW on the part of DOJ officials, especially Brewer and Videnieks. Their harassment of INSLAW was permitted to continue unchecked because D. Lowell Jensen, who between 1981 and 1986 served successively as Assistant Attorney General in charge of the Criminal Division, Associate Attorney General, and Deputy Attorney General, was biased against INSLAW. As District Attorney of Alameda County in California in the 1970s, Jensen developed case management software which competed unsuccessfully against PROMIS in California. By the time Jensen came to DOJ in early 1981, he believed that DOJ had been wrong to promote the use of PROMIS by district attorneys' offices instead of his own case management software.

B. INSLAW's February 1988 Submission to the Public Integrity Section

3. After the Bankruptcy Court trials ended, my wife, Nancy Hamilton, and I looked back over everything that had happened since

DOJ awarded INSLAW the PROMIS contract. We concluded that the vengefulness of Brewer and the hostility of Jensen could explain the desire to harm and even to destroy INSLAW, but that it did not explain a series of attempts to acquire control over INSLAW's case management software so tenacious that they could be accounted for only on the basis of someone expecting to be in a position to make a lot of money from PROMIS. Once having perceived this, we were able to develop a coherent explanation of what had happened to INSLAW. We first sought, but did not obtain, an opportunity to present this explanation directly to the appropriate authorities in DOJ. We then submitted a written statement to the Public Integrity Section of the Criminal Division in February, 1988. The statement wove together the facts found by the Bankruptcy Court with other information, including that concerning the attempts to gain control over PROMIS. In the opinion of our counsel, the aggregate information thus combined was more than sufficiently specific and credible to warrant the appointment of an independent counsel. My wife and I sought through litigation counsel to meet with the Public Integrity Section prosecutor to convince her of this, but were denied an opportunity for such a meeting. The following is a condensation of the information which supplemented the Court's findings:

a. Edwin Meese and Jensen served together in the Alameda County District Attorney's office before Meese became Chief of Staff to Governor Ronald Reagan. By 1980, both the Senate Judiciary Committee and the Office of Management and Budget had recommended that DOJ establish "compatible, comprehensive case management systems among its litigating components." Through these sources as well as through Jensen, Meese would have become aware of this requirement. That he was also aware of PROMIS' capability was confirmed by a

luncheon speech on April 21, 1981 in Washington, D.C. to INSLAW's PROMIS users from throughout the U.S. in which Meese stated that he became familiar with INSLAW's work with PROMIS during the preceding several years while he was at the University of San Diego.

b. Dr. Earl Brian served as Secretary of Health with Meese in the Cabinet of Governor Reagan. By January 1981, when Meese became Counsellor to President Reagan, Brian was the controlling shareholder in Biotech Capital Corporation. The same month, Mrs. Meese bought stock in Biotech's first public offering. The money to pay for the stock was loaned to her by Edwin Thomas, another old California friend. At about that same time, Brian lent Thomas, who had just come to Washington as an aide to Mr. Meese, $100,000 for the purchase of a house. Mrs. Meese later bought stock in American Cytogenetics, another Brian company. During the first two years of the Reagan administration, Brian served as the Chairman of a Health Care Cost Reduction Task Force which reported to Meese.

11

c. Meese was nominated as U.S. Attorney General in January 1984. Soon after that, Jacob Stein became the Independent Counsel charged with investigating, inter alia, Meese's failure to disclose both Mrs. Meese's purchase of the Biotech stock and her receipt of the loan which financed it. Failing to find any connection between these transactions and Meese's official duties, Stein closed this

aspect of his investigation. Stein was unaware of the facts set forth in the following subparagraphs.

d. Brian was in a position to exploit his friendship with Meese. Brian controlled Biotech, and Biotech controlled Hadron, Inc. Hadron was in the business of integrating federal government computer-based information management systems. In May 1983, when the contract disputes began, the PROMIS system was already in use in the larger U.S. Attorneys' offices. It was then -- and is now -- the best available case management software. Brian could acquire PROMIS at little or no cost either by having DOJ procure a determination that the government, and not INSLAW, had title to the software; by having DOJ push INSLAW into liquidation, making the software available at a fire-sale price; or by arranging a friendly or hostile takeover of INSLAW. One after another, all three approaches were in fact pursued. The first two are described in the Bankruptcy Court's findings. The attempts at the third are detailed in subparagraphs f and i of this paragraph and subparagraphs d-f, and l-p of subparagraph 4. Brian's chance to use PROMIS would come whenever Meese and Jensen were able to launch the DOJ-wide Office Automation and Case Management Project for which, as noted above, the need had long been recognized.

e. In June 1983, a DOJ "whistleblower," whose identity INSLAW has not yet been able to

discover, warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install the PROMIS software in every litigation office of DOJ.

f. On April 20, 1983, about two weeks after the contract modification referred to in paragraph 2(a) and less than a month before the first of the sham contract disputes, I received a phone call from Dominick Laiti, Chairman of Hadron, Inc. Laiti told me that Hadron needed the PROMIS software for federal government contracts that it expected to receive as a result of its political contacts at the highest level of the Reagan Administration. Laiti said that Hadron intended to become the leading vendor in the United States of software for law enforcement and courts and that this was why it had recently purchased SIMCON, Inc. (police software) and ACCUMENICS, Inc. (litigation support software) and why it was seeking to purchase INSLAW (court and prosecution software). Laiti identified Edwin Meese as Hadron's political contact at the highest level of the Reagan Administration, when I asked Laiti to whom he was referring. Laiti also told me that Mrs. Meese owned stock in his company. When I declined to meet with Laiti to discuss his proposition, Laiti said: "We have ways of making you sell."

g. In May 1983, DOJ officials initiated a series of major contract disputes with INSLAW. These

were sham disputes concocted as pretexts for withholding an increasingly larger amount of money each month of the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW for services rendered under the contract, thus forcing INSLAW to seek Chapter 11 protection.

h. As soon as Meese became Attorney General, he and Jensen set in motion steps toward carrying out the DOJ-wide office automation and case management project. A request for proposals for this procurement, known as the Uniform Office Automation and Case Management Project and code-named "Project Eagle," was announced on May 25, 1986. Initial cost estimates were in the vicinity of $212 million; however, the options to expand the contract to encompass DOJ's quasi-autonomous bureaus could multiply this cost estimate by a factor of three or four. Although most of the capacity of the Project Eagle computers would be wasted without case management software, the request for proposals did not provide for the acquisition or development of any such software. DOJ acknowledged that it did not possess this software but nevertheless stated that it did not wish to have the winning bidder develop it. DOJ denied at first that certain provisions of the procurement, mandated through an Amendment to the Request for Proposals, dated May 25, 1986, implied an undisclosed plan to use PROMIS on Project Eagle computers but later admitted that the very purpose of those provisions was to make such use possible.

i. After the 1985 attempt to push INSLAW into liquidation failed, Systems and Computer Technology, Inc. (SCT), a Pennsylvania-based computer services company, launched a hostile takeover bid for INSLAW. My rejection of the SCT bid was supported by INSLAW's creditors.

j. In March 1987, Judge Blackshear told Judge Jane S. Solomon of the Civil Court of the City of New York that the pressure to force the liquidation of INSLAW referred to in paragraph 2(b) was part of a "conspiracy to get the INSLAW software." In the same period, Judge Blackshear made several statements consistent with his original testimony during the course of telephone conversations with Charles Docter, Brian O'Neill, and Michael Lightfoot, INSLAW's counsel. In the summer of 1988, Judge Blackshear told Anthony J. Pasciuto, the former Deputy Director of the Justice Department's Executive Office for U.S. Trustees, that he had recanted his sworn testimony about the DOJ conspiracy to liquidate INSLAW so that fewer people would be hurt.

C. Additional Evidence Assembled by INSLAW

4. Despite the credibility and specificity of the foregoing information, John Keeney, Acting Assistant Attorney General for the Criminal Division, informed INSLAW in a letter dated May 4, 1988 that the Division had completed its review of the Hamiltons' allegations and concluded that the appointment of an independent counsel was not warranted. The letter also stated that the Public Integrity Section would investigate certain of the allegations.

INSLAW has meanwhile conducted its own effort to corroborate them. Although this effort has been handicapped by the fact that we have been denied access to subpoena power and discovery proceedings pending the government's appeal from the Bankruptcy Court judgment, we have nevertheless been able to obtain the significant information which follows:

a. Donald Santarelli, a former Administrator of the Law Enforcement Assistance Administration and an attorney for INSLAW, met with Meese at the White House on May 4 or 5, 1981. Immediately following the meeting, Santarelli telephoned me to say that Meese had told him that Jensen, then heading the Criminal Division, had been chosen to spearhead a project to install the PROMIS software in all 94 U.S. Attorneys' offices, each of the DOJ legal divisions, and in quasi-autonomous DOJ bureaus such as the Bureau of Prisons, the Immigration and Naturalization Service, and the U.S. Marshal's Service.

b. An informant who does not wish to be named until assured of protection against reprisal told INSLAW with regard to the sham contract disputes that in 1984, Marilyn Jacobs, Jensen's secretary at DOJ, stated to the informant that "Jensen was the main person behind the INSLAW problem" and that "his style was to operate using his subordinates."

c. Frank Mallgrave, former Assistant Director of DOJ's Executive Office for U.S. Attorneys (EOUSA), told INSLAW that in May or June 1981, when Lawrence McWhorter was Deputy Director of

EOUSA, McWhorter confided to Mallgrave that INSLAW was likely to win the competition for the PROMIS procurement and that "we are going to get INSLAW." Soon thereafter DOJ ousted the two key officials in charge of DOJ's PROMIS program and replaced them with persons recruited from outside DOJ. Betty Thomas, the PROMIS DOJ Contracting Officer, was removed by threatening to charge her with "nonfeasance" unless she voluntarily stepped aside; she was replaced by Videnieks. Patricia Goodrich, the PROMIS Project Manager, was pushed aside to make room for Brewer.

d. John Schoolmeister, a former Customs Services Program Officer, told INSLAW that Videnieks, at the time he was hired as the PROMIS Contracting Officer, was the Contracting Officer for two contracts between the U.S. Customs Service and Hadron, Inc., and that Videnieks came to know the Hadron management during the course of that assignment.

e. Paul Wormeli, former Vice President of Simcon, Inc., a Hadron subsidiary, and Marilyn Titus, former secretary at both Simcon and Hadron, gave INSLAW information about the sequel to the approach by Dominick Laiti referred to in subparagraph 3(f) above. Both Wormeli and Titus said that Laiti, Wormeli, and Brian met in New York in September 1983 to raise capital for Hadron. Wormeli said that their aim was to raise $7 million for Hadron's expansion into criminal justice information systems. Titus, then secretary to Wormeli, added that the

purpose of the trip was to "raise capital to buy the court [i.e., PROMIS] software." Wormeli also stated that he and Laiti met during this September 1983 visit to New York with Mark Tessleman, then Vice President of Allen and Company, a Wall Street Investment Bank, to discuss raising the capital.

f. Jonathan Ben Cnaan, an account executive with 53rd Street Ventures, a New York City venture capital firm that then had a small equity investment in INSLAW, described a meeting in September 1983 at 53rd Street Ventures with a "businessman with ties at the highest level of the Reagan Administration" who was eager to obtain the PROMIS software for use in federal government contract work. The meeting took place several months after the contract disputes with DOJ had emerged, and the businessman assured 53rd Street Ventures that INSLAW would never be able to resolve them. According to Ben Cnaan, the businessman was annoyed that I had rebuffed an attempt earlier that year to buy INSLAW in order to obtain title to the PROMIS software.

g. In December 1984, shortly before INSLAW's Chapter 11 filing, Daniel Tessler, the Chairman of 53rd Street Ventures, came to INSLAW and tried to induce my wife and me to turn over to him the voting rights of our controlling interest in INSLAW common stock. Daniel Tessler told me that neither 53rd Street Ventures nor Hambro Venture Capital would attempt to help INSLAW raise capital and avoid

possible disintegration unless we turned over the voting rights of our stock to him by the end of the business day. Daniel Tessler is a relative of Alan Tessler, the senior partner in the New York City law firm of Shea and Gould responsible for Brian's and Hadron's mergers and acquisitions work. At a national venture capital meeting in Washington, D.C. in May 1988, Patricia Cloherty, Daniel Tessler's wife and former business partner, told Richard D'Amore, an officer of Hambro International Fund, that she "knew all about" Brian's role in the INSLAW matter.

h. In approximately June 1985, Edward Hurley, then a Hadron Vice President in charge of its criminal justice systems work, told Theresa Bousquin that he did not believe that INSLAW would be able to survive a Chapter 11 and that Hadron wanted to acquire INSLAW's "court software" to complement its law enforcement software. Hurley resigned from Hadron in August 1985, the month after the U.S. Bankruptcy Court issued a Confidentiality Order sealing INSLAW's proprietary and customer information from DOJ. The Confidentiality Order thwarted DOJ's covert efforts to liquidate INSLAW. In the fall of 1985, Hadron divested itself of the law enforcement software that Hurley had earlier that year cited as a key part of Hadron's ambitions in the criminal justice field.

i. A second informant who fears reprisal told INSLAW that James L. Byrnes, a Deputy Assistant

Attorney General in the Land and Natural Resources Division with close ties to Meese, spearheaded the award by DOJ in October 1987 to a Hadron subsidiary of a $40 million computer services contract for litigation support in that Division.

j. Jacob Stein reported that Meese's telephone logs were missing for certain periods in 1983. INSLAW later discovered that these periods coincided with the effort to force INSLAW to turn over the proprietary version of PROMIS, the eruption of the contract disputes, and the Brian and Laiti meetings in New York City.

k. Henry Darrington and Timothy Walker, both former Dickstein, Shapiro and Morin employees, told INSLAW that they participated in the shredding of about 40 boxes of Meese's documents acquired by the law firm in connection with its representation of Meese in the Stein investigation.

l. Michael Simmons, former Assistant Vice President of Systems and Computer Technology (SCT), told INSLAW that the hostile takeover bid referred to in paragraph 3(i) above was discussed in advance with DOJ officials. He said that DOJ officials met in late 1985 with representatives of SCT to encourage the takeover and that the officials strongly hinted that INSLAW's contract disputes would be settled quickly once I was ousted as President of INSLAW.

m. Very close to the time that SCT discussed its hostile takeover bid with DOJ officials, it also discussed the planned takeover with "Mr. Allen" of Allen and Company, according to former SCT employees Robert Radford and Norman Keyt. In approximately September 1985, Michael Emmi, SCT President, and Michael Simmons, flew on a private aircraft to the Berkshire Mountains for a meeting with "Mr. Allen" of the Wall Street investment bank of Allen and Company to discuss the plan for SCT's takeover of INSLAW. Herbert A. Allen, Jr., President of Allen and Company, has a home in the Williamstown, Massachusetts area of the Berkshires. Radford heard Emmi boast, at about the time of the meeting, that he had contacts through which he could manipulate INSLAW's contract disputes with DOJ. According to the Securities and Exchange Commission, Allen and Company subsequently invested about $5 million to buy about 7.8% of SCT. Richard Crooks, the Allen and Company trader who bought the SCT shares, reportedly told Sue Grimm, former SCT Director of Investor Relations, that Allen and Company bought the SCT stock on behalf of a third party whose identity Crooks was not free to disclose, and that Allen and Company had, in fact, made a written acquisition offer, on behalf of the third party, to the SCT Board of Directors, but that the offer had been declined. The Allen and Company disclosures to the Securities and Exchange Commission, do not, however, reveal that the Allen and Company purchases of the SCT stock were made on behalf of any third party.

n. According to Radford, he and other SCT employees were given scripts by SCT management to use in attempting to disparage INSLAW to its existing and prospective customers in state and local governments throughout the United States during 1986. Part of the script was to cast doubt on INSLAW's title to the PROMIS case management software, and, therefore, the need to pay INSLAW license fees.

o. In early 1986, Michael Searcy, then Senior Vice President of SCT, met with me in Washington, D.C., and offered to pay me and my wife the sum of $500,000 if we would support the sale of INSLAW by its creditors to SCT. According to Norman Keyt, SCT had authorized Searcy to pay us as much as $1,000,000, but decided, instead, to proceed with a hostile takeover when I did not demonstrate any interest in the SCT offer.

p. During the approximately year-long period of the SCT effort to acquire INSLAW, Brian's mergers and acquisition counsel, Shea and Gould, continued to bill time and expenses to the INSLAW bankruptcy case. INSLAW has a copy of a Shea and Gould invoice for services rendered in the INSLAW case between October 1, 1985 and September 25, 1986. Shea and Gould was not serving as counsel of record for any INSLAW creditor during this period. According to former SCT employees Harry Stege and Norman Keyt, and former SCT consultant Thomas Evans, there was a New York City law firm that did not represent SCT, but which worked behind the

scenes to assist SCT in the hostile takeover bid for INSLAW. According to Evans, there was a Shea and Gould file in the SCT Law Systems Division in Phoenix containing documents transmitted by FAX from SCT headquarters. According to Stege, the New York City law firm introduced Emmi to one or more members of INSLAW's Unsecured Creditors Committee so that Emmi could disparage INSLAW's ability to reorganize under its current management, and also obtain confidential INSLAW data for use in formulating the SCT takeover bid.

q. Lois Battistoni, a former DOJ Criminal Division employee, told INSLAW that an employee of the Criminal Division disclosed to her in 1988 that the company chosen to take over INSLAW's business with DOJ was connected to one of the top DOJ officials through a California relationship and that Hadron fit the bill because both Brian and Meese served together in Governor Reagan's administration in California.

r. Battistoni's informant also told her that between February and May 1989 DOJ was still considering the installation of PROMIS on the Project Eagle computers. In early May 1989, a decision not to do so was made "at the highest level" of DOJ. On June 20, 1989, however, DOJ announced plans to buy expensive new computers for each of the 42 largest U.S. Attorneys' offices so that they could continue to use PROMIS in those offices. This meant that 42 computers contracted for under Project

Eagle would be wasted. DOJ was "afraid to do otherwise" because the computers on which the U.S. Attorneys' offices had been operating PROMIS were fast becoming obsolete and there was no case management software, other than PROMIS, available for installation on the new Project Eagle computers.

s. Battistoni also learned from another employee of the Criminal Division in July 1989 that DOJ intended "to bury INSLAW," meaning cover up what it had done to INSLAW.

5. In late April 1988, Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, telephoned me to request a full briefing on the disputes between INSLAW and DOJ. My wife and I subsequently briefed LeGrand at INSLAW on the morning of May 11. LeGrand telephoned me two days later with information that he said a trusted source had asked him to convey. LeGrand described the source as a senior career official in DOJ "with a title" whom LeGrand had known for 15 years and whose veracity LeGrand could attest to without reservation. Shortly after DOJ's public announcement on May 6, 1988 that DOJ would not seek the appointment of an independent counsel in the INSLAW matter and that it had cleared Meese of any wrongdoing, the source told LeGrand that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth." The source also said that the "Justice Department has been compromised on the INSLAW case at every level." On several occasions since then, LeGrand has confirmed what he told me, and on October 11, 1988, Elliot Richardson, counsel to INSLAW, sent Robin Ross, an assistant to Attorney General Dick Thornburgh, a memorandum summarizing the statements attributed by LeGrand to his source. In addition, the source made the following statements:

a. Jensen engineered INSLAW's problems right from the start and relied for this purpose principally upon three senior DOJ officials: Miles Matthews, Executive Officer of the Criminal Division; James Knapp, a non-career Deputy Assistant Attorney General in the Criminal Division; and James Johnston, Director of Contract Administration in the Justice Management Division. Miles Matthews stated in the presence of LeGrand's source that "Lowell [Jensen] wants to get INSLAW out of the way and give the business to friends."

b. The source told LeGrand that John Keeney and Mark Richards, each a career Deputy Assistant Attorney General in the Criminal Division, and Philip White, the recently retired Director of International Affairs for the Criminal Division, knew "all about" the Jensen malfeasance in the INSLAW matter. Although Richards and White were "pretty upset" about it, the source did not believe that either of them would disclose what they knew except in response to a subpoena and under oath. The source added that he did not think either Richards or White would commit perjury.

c. The source believes that documents relating to Project Eagle were shredded inside DOJ, but that INSLAW should nevertheless subpoena DOJ paperwork prepared by a Jensen subordinate relating to the purchase of large quantities of computer hardware for which the senior DOJ career staff could see no justification.

D. INSLAW's Allegations Were Not Seriously Investigated

6. The information summarized above is self-evidently material to INSLAW's allegations. It supports the inference that the effort to destroy INSLAW was motivated by the aim of acquiring PROMIS for Project Eagle. If the Public Integrity Section had done no more than match INSLAW's independent effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information. INSLAW has asked the individuals identified in the preceding paragraphs whether or not they have ever been asked about the INSLAW case by anyone representing the Department of Justice. Beginning on December 11, 1989, INSLAW attempted to recontact each of the approximately 30 witnesses mentioned in this Affidavit to see if any of them has ever been contacted about INSLAW by DOJ. As far as we could determine, only one has been approached. Two representatives of the Department of Justice interviewed Judge Jane Solomon. I am reliably informed, moreover, that the Department of Justice has not yet attempted to obtain the testimony of the informant whose statements to Ronald LeGrand are described in paragraph 5 above. Although my own detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, the Department of Justice has not interviewed me either about my wife's and my February 1988 written statement, or about what we have since learned.

7. Assuming that a full, thorough, and impartial investigation would have sought to obtain relevant documents, correspondence, notes, appointment calendars, and telephone logs from individuals and organizations involved with INSLAW, I and my representatives have taken steps to find out whether or not the Department of Justice has made any such effort. So far as we can determine, this has not been done. The DOJ has never sought documents from Allen and Company relative to the effort of Brian, Laiti and Wormeli to

raise capital for Hadron. Neither has DOJ sought documents from 53rd Street Ventures or its then parent organization, Alan Patricoff and Associates, relating to communications about INSLAW, with a businessman having ties to the highest level of the Reagan Administration. DOJ has not sought documents from Systems and Computer Technology (SCT) relating to meetings between representatives of SCT and officials of DOJ in connection with SCT's attempt to take over INSLAW. The same is true, so far as we can find out, with respect to documents bearing on the communications during the years 1981-1988 between Earl Brian or Dominick Laiti, and Meese, Videnieks, Brewer, Jensen, Thomas Stanton, Patrick R. Gallagher, John Oakes, and Raymond Vickery, Jr.; the efforts of Hadron, Brian or Laiti, to enlist the cooperation of 53rd Street Ventures, or other INSLAW shareholders in acquiring the PROMIS software; and the identity of the person on whose behalf Allen and Company made a multi-million dollar equity investment in SCT at the time when SCT was trying to take over INSLAW.

William A. Hamilton

William A. Hamilton

DISTRICT OF COLUBMIA; ss:

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia this 22nd day of December 1989.

Deborah L. Branzell

Notary Public

DEBORAH L. BRANZELL, Notary Public
in and for the District of Columbia
My Commission Expires August 14, 1993

My Commission expire: _____

Exhibit A

MILBANK, TWEED, HADLEY & McCLOY

INTERNATIONAL SQUARE BUILDING
1825 EYE STREET, N.W.
WASHINGTON, D.C. 20006

(202) 835-7500
RAPICOM 230: 835-7586/7508
I. T. T. 440667

ELLIOT L. RICHARDSON
PARTNER

1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

NIPPON PRESS CENTER BUILDING
2-1 UCHISAIWAI-CHO 2-CHOME
CHIYODA-KU, TOKYO 100

ALEXANDRA HOUSE
16 CHATER ROAD
HONG KONG

1 COLLEGE HILL
LONDON EC4R 2RA, ENGLAND

1903/04 SHELL TOWER
50 RAFFLES PLACE
SINGAPORE 0104

515 SOUTH FIGUEROA STREET
LOS ANGELES, CA. 90071

October 11, 1988

The Honorable Robin Ross
Executive Assistant to the Attorney General
Department of Justice
Room 5111
10th & Constitution Avenue
Washington, D.C. 20530

Dear Mr. Ross:

Thank you for speaking with me today. Attached is an outline of the points we discussed.

With best wishes,

Sincerely,

Elliot L. Richardson

(A) When we spoke by telephone last week, you stated that there were two investigations under way on the INSLAW case, one by a member of Attorney General Thornburgh's staff and the other by the Office of Professional Responsibility. (OPR)

(B) Since our conversation, I have learned that OPR contacted William Hamilton, President of INSLAW last Wednesday and arranged to interview him on Tuesday, October 11, 1988.

(C) Mr. Hamilton intitially agreed to be interviewed, but informed the OPR attorney, Robert Lyon, that he lacks confidence in the ability of OPR to conduct an independent and credible inquiry into the INSLAW case based on the OPR report to Deputy Attorney General Arnold Burns in December, 1987 that attempted to dismiss the Findings of Fact of U.S. Bankruptcy Judge George Bason, Jr. concerning Thomas Stanton, Director of the Executive Office for United States Trustees. Judge Bason had found, at the conclusion of a week-long trial, and after evaluating contemporaneous written notes of DOJ officials obtained under subpoena and after reviewing the sworn testimony of a number of witnesses, that Mr. Stanton had applied political pressure on two United States Trustees to force the conversion of INSLAW from Chapter 11 to Chapter 7 (liquidation) "through unlawful means and without justification." The OPR report to Deputy Attorney General Burns not only dismissed Judge Bason's findings, but also recommended the firing of Anthony Pasciuto, then a deputy to Mr. Stanton, who had met with Mr. and Mrs. Hamilton on March 17, 1987 as a "whistleblower" about Mr. Stanton's unlawful conduct against INSLAW. The attached letter of March 17, 1988 from Mr. Pasciuto's attorney to Deputy Attorney General Arnold Burns (Attachment A) summarizes documentary and testimonial evidence at the trial which the OPR report to Mr. Burns, ignored and which contradicts the conclusions in the OPR report to Deputy Attorney General Burns.

(D) Not only did OPR ignore the Court record in reaching its conclusions that Mr. Pasciuto should be fired for his unauthorized communications to the Hamiltons, but OPR also

neglected to contact the Hamiltons for their account of the meeting with Mr. Pasciuto. The March 17, 1988 letter from Mr. Pasciuto's attorney to Deputy Attorney General Burns also summarized and enclosed copies of contemporaneous written notes from the Hamiltons and their attorneys that provide further corroboration for Judge Bason's Findings of Fact.

(E) Since Mr. Hamilton's telephone conversation with OPR Attorney Robert Lyon, he has had an opportunity to consult his litigation counsel, Charles Work, and me on this matter and we are concerned that OPR may itself be part of the problem in regard to the INSLAW case for the following reasons:

1. The performance of OPR in the Pasciuto whistleblower phase of the INSLAW case.

2. The fact that Mr. Robert Lyon appears to have been responsible for the OPR investigation of the INSLAW case for almost two years (see attached letters from Mr. Lyon to Joseph Godwin, Attachments B and C), and that despite the revelations at two highly publicized trials about DOJ malfeasance against INSLAW and extensive media reports alleging even more serious DOJ malfeasance against INSLAW, Mr. Lyon has waited for almost two years before even contacting INSLAW. Is it realistic to expect Mr. Lyon at this late date to issue a report that would implicitly raise questions about why it took OPR so long to recommend remedial action? Or is it more realistic to expect Mr. Lyon to try to defend his past inaction?

3. The award of a $20,000 Senior Executive Service bonus to Mr. Shaheen, who heads OPR, by Attorney General Meese in late 1987 while the OPR investigation into the INSLAW case was underway. INSLAW had, by the time of the SES bonus award made allegations that Attorney General Meese and Deputy Attorney General Arnold Burns may have caused INSLAW's original litigation counsel to fire the partner in charge of the INSLAW case, and to withdraw legal representation from INSLAW.

4. The repeated reports, attributed to specific current employees of DOJ, that DOJ employees are fearful of reprisals if they come forward and tell what they know about DOJ malfeasance against INSLAW.

5. A statement, attributed to a current employee of the Justice Management Division, that everybody in the Department has been lying to OPR in its investigation of the INSLAW case.

(F) INSLAW is anxious to cooperate with DOJ in its inquiry into the INSLAW matter and we believe that INSLAW and its litigation counsel could help such an inquiry by suggesting specific internal DOJ documents to be reviewed, and specific DOJ officials to be interviewed, based on information that INSLAW has obtained in its own investigation. The sine qua non for such an inquiry is, of course, confidence in the independence and impartiality of the investigation.

(H) In my letter to Attorney General Thornburgh of August 19, 1988, I referred to allegations that have been made by a senior career official of DOJ to the Chief Investigator of the Senate Judiciary Committee, Mr. Ron LeGrand, concerning the INSLAW case. Our own investigation has independently developed information, attributed to specific current employees of DOJ, that is highly consistent with the allegations made by the confidential informant to Mr. LeGrand, and that further underscores the importance of having an independent and impartial inquiry into the INSLAW matter. This independently developed information tends to corroborate the following allegations by the informant:

1. That D. Lowell Jensen engineered INSLAW's contract disputes with DOJ right from the start while he was serving as Assistant Attorney General for the Criminal Division.

2. That Mr. Jensen relied upon specific high level deputies in the Criminal Division to carry out his wrongful orders about INSLAW.

3. That a number of other senior officials and others in the Criminal Division know about this wrongful behavior and are upset about it.

4. That Mr. Jensen's objective was to get INSLAW out of the way so that the Department's case tracking business could be given to "friends."

5. That DOJ officials fear reprisals if they come forward and tell the truth about the Department's behavior in the INSLAW case.

ELR

October 10, 1988

Exhibit B

THE THIRTY WITNESSES REFERRED TO IN INSLAW'S WRIT OF MANDAMUS LAWSUIT FILED IN U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ON DECEMBER 26, 1989

1.	William A. Hamilton	(202) 828-8638 (O)
2.	Nancy B. Hamilton	(202) 828-8640 (O)
3.	New York City Judge Jane Solomon	
4.	Charles A. Docter, Esq.	(202) 628-6800 (O)
5.	Brian J. O'Neill, Esq.	(213) 451-5700 (O)
6.	Michael Lightfoot, Esq.	(213) 622-4750 (O)
7.	Anthony J. Pasciuto	(518) 457-6137
8.	Donald Santarelli, Esq.	(202) 466-6800
9.	*	
10.	Frank Mallgrave	(202) 586-8077 (O)
11.	John Schoolmeister	(703) 978-3045 (H)
12.	Paul Wormeli	(703) 689-0001 (O)
13.	Marilyn Titus	(301) 340-2814 (H)
14.	Jonathan Ben Cnaan	(212) 832-2230
15.	Richard D'Amore	(617) 523-7767 (O)
16.	Theresa Bousquin	(202) 828-8624 (O)
17.	Charles Trombetta	(301) 948-1873 (H)
18.	Henry Darrington	(318) 387-9261
19.	Timothy Walker	
20.	Michael Simmons	(312) 726-1167
	(Last known business number, which was for Oracle Systems, Chicago)	
21.	Robert Radford	(408) 646-4210 (O)
22.	Norman Keyt	(602) 931-9735 (O)
23.	Sue Grimm	(215) 363-5300 (O)
24.	Harry Stege	(918) 250-1424 (H)
25.	Thomas Evans	(517) 373-2855 (O)
26.	Lois Battistoni	(703) 491-6151 (O)
27.	*	
28.	*	
29.	Ronald LeGrand	(201) 682-6930 (O)
30.	*	

* - The four persons whose names are asterized were not identified by name in the Petition for Mandamus because they were still employed in the Department of Justice (DOJ) in December, 1989, when INSLAW filed its lawsuit.

Exhibit C

INSLAW, Inc.

1125 15th St., N.W. Suite 300 Washington, D.C. 20005
(202) 828-8600 FAX (202) 659-0755

William A. Hamilton, President

April 23, 1990

PRESS RELEASEPRESS RELEASE***PRESS RELEASE***

Office: (202) 828-8600
Home: (301) 299-2870

INSLAW today filed a bid protest at the U.S. Department of Justice challenging the legality and propriety of a pending procurement for case management software. The procurement in question is Request for Proposals (RFP) No. JPLDN-90-R-0020, issued by the Justice Department on January 30, 1990 for new case management software to replace INSLAW's proprietary PROMIS case management software in the Justice Department's Land and Natural Resources Division.

The INSLAW bid protest charges that the pending procurement is a thinly disguised effort by the Justice Department to convert the PROMIS software to a new format in an effort to escape its obligation to purchase licenses from INSLAW. INSLAW further charges that this thinly disguised conversion plan is a violation of the permanent injunction issued by the U.S. Bankruptcy Court in January 1988 and upheld on appeal by the U.S. District Court for the District of Columbia. That injunction prohibits the Justice Department from expanding the use of PROMIS and from converting PROMIS for operation on other platforms.

INSLAW characterizes the pending procurement as "an outgrowth of a continuing bias against INSLAW which has been fueled by a lack of regard for INSLAW's legitimate proprietary rights in case management software now installed in the Department of Justice." According to the INSLAW protest, Justice Department conduct in the pending procurement raises "the disturbing possibility that the DOJ's purpose is not to develop PROMIS-like software, but to steal it."

The Justice procurement (1) seeks a vendor that has recent and extensive experience working with the PROMIS software; (2) to develop a new case management software system that contains all of the functions and features of PROMIS; (3) that will replace PROMIS; and (4) for which the Government will own exclusive title.

The Justice procurement (5) fails to provide a detailed design specification for the new case management software but (6) requires that the vendor bid the development on a firm fixed price basis and (7) complete the development and installation within twelve months of contract award.

In a written response to a bidder's question, published by Justice to all bidders, Justice alluded to the real design specification for the new software: "The Land Division has concluded that PROMIS experience is one of the most critical factors in developing the new system."

Without such an illicit conversion of PROMIS, the amount of time required for a vendor to develop a new case management software system would be about three years, according to an August 25, 1989 letter from the Justice Department to the General Services Administration. In that letter, Justice acknowledged that the permanent injunction would prevent Justice from converting INSLAW's PROMIS software.

In preparation for the procurement, Justice commissioned a market survey by Planning Research Corporation to assess the availability of existing case management software, either within Justice itself or in the commercial marketplace, to satisfy the Land Division requirement. This market research study failed to acknowledge the existence of the PROMIS software or of INSLAW, Inc. in reaching its conclusion that no software existed that could satisfy the Land Division requirement. The omission of PROMIS is remarkable in light of the fact that it is the most widely used case management software product in the Justice Department, and that the functions and features mandated for the new case management software match the current functions and features in PROMIS.

INSLAW President William A. Hamilton issued the following statement: "This pending procurement exposes the hypocrisy of the Justice Department's request to the U.S. Court of Appeals for appointment of a neutral mediator to resolve the disputes between INSLAW and the Justice Department. What is needed instead of a neutral mediator is an honest cop."

INSLAW has pending before Senior U.S District Judge William B. Bryant, Jr. a Petition For A Writ Of Mandamus to compel Attorney General Dick Thornburgh and the U.S Department of Justice to conduct a fair and thorough investigation of the malfeasance against INSLAW already found by the U.S. Bankruptcy Court and affirmed on appeal by Senior Judge Bryant. According to Mr. Hamilton, "the failure of the Justice Department to investigate and discipline the officials who committed the malfeasance against INSLAW, when combined with the transparently fraudulent nature of the current procurement, underscores the urgency of court intervention to correct the obvious breakdown in law and order in the U.S. Department of Justice."

COHEN & WHITE
SUITE 504
1055 THOMAS JEFFERSON STREET, N. W.
WASHINGTON, D. C. 20007
202-342-2550
FACSIMILE: 202-342-6147

April 23, 1989

Carol Rothgeb
Contracting Officer
U.S. Department of Justice
Procurement Service
Procurement Services Staff
601 D Street, N.W., Room 7100
Washington, D.C. 20530

Re: Protest of INSLAW Under RFP No. JPLDN-90-R-0020

Dear Ms. Rothgeb

INSLAW, Inc. hereby protests the award of any contract under the above-captioned RFP for the development of a comprehensive case management system for the Land and Natural Resources Division of the Department of Justice. The grounds of this protest are that the RFP unreasonably excludes off-the-shelf, commercial packages from consideration. In addition, the RFP is blatantly wired so as to virtually guarantee the selection of Software Development and Services Company (SDSC), which is run by William Garbee, a former INSLAW software executive. The RFP also contains misleading and erroneous information regarding the Department of Justice's ownership of software. The RFP is fatally flawed because of improper procurement planning. Finally, the RFP violates a court injunction which prohibits the conversion of PROMIS to other platforms. This RFP is a conversion contract masquerading as a development effort.

INSLAW requests the Department of Justice to cancel this RFP, and prepare a new solicitation which would permit INSLAW to propose its off-the-shelf software. In addition, the RFP should be structured so as not to violate the bankruptcy court injunction which prohibits precisely the activity that the Department is now undertaking.

The current procurement is an outgrowth of a continuing bias against INSLAW which has been fueled by a lack of regard for INSLAW's legitimate proprietary rights in case management software now installed at the Department of Justice. INSLAW is concerned that versions of this software are proliferating throughout the Justice Department with little or no management controls. These practices cannot go unchallenged. We request the Department of Justice to limit the damage to INSLAW by identifying the systems involved and putting controls on the dissemination of PROMIS-based software so that continued proliferation will not occur.

I. STATEMENT OF FACTS

On January 30, 1990, the Department of Justice issued a request for proposals to develop a comprehensive case management system for the Land and Natural Resources Division of the Department of Justice. As extended by Amendment 4, the due date for proposals is April 24, 1990. The purpose of the procurement is to obtain

> ...the services of an outside contractor to develop a comprehensive case management system for the Land and Natural Resources Division (Lands). For purposes of this project, case management refers to case tracking,

> attorney and paralegal timekeeping, debt and expert witness tracking, files management, FOIA/Privacy Act tracking, and case planning. The proposed systems will replace several automated and manual systems currently in use in the Division...."
>
> RFP at C-2.

The RFP further requires completion of all system development and implementation within one year of the date of contract award. Id. at B-1. Although the RFP does not contain detailed design specifications for the desired software, it did contain a number of functional and design requirements. As explained in more detail below, these requirements precisely match the capabilities of PROMIS, a proprietary case management product developed by INSLAW and installed at the Land and Natural Resources Division. Indeed, the RFP states on page C-13, that the Land Docket Tracking System, which is implemented in PROMIS, is "the principal case management system in the Division..." And page C-56 of the RFP stipulates that the new system developed in this procurement "...must provide the same functionality as the existing systems, as well as the items enumerated above, and more."

The version of PROMIS which is now installed at the Lands Division is a hierarchical data base. However, INSLAW recently completed development and testing of a new version of PROMIS which operates under the IBM relational data base management system, DB2. We will refer to this version of PROMIS as PROMIS/DB2. INSLAW is currently shipping PROMIS/DB2 to commercial customers.

DB2 is one of the two data base environments which the Department of Justice specifies for the RFP's case management development. The DOJ RFP contemplates that development of the case management system will occur in conjunction with a fourth generation relational data base management system. The RFP notes that the Justice Department Data Center will be purchasing DB2 or ORACLE in the near future, and encourages vendors to use one of these packages in its development effort. Although the RFP permits vendors to propose other data base management systems, it states that, "A vendor which submits an offer for both the alternative RDBMS and labor should bear in mind that the Lands Division has the option of developing a system on DB2 or ORACLE at no cost to the Lands Division." RFP at C-58b. Thus, the RFP clearly encourages use of DB2 and ORACLE in software development. See also Question and Answer 71. And INSLAW is able to deliver <u>now</u> a version of PROMIS which runs under one of the data base management systems that the Department has specified.

I. THE RFP IS UNREASONABLY RESTRICTIVE BECAUSE IT PRECLUDES INSLAW FROM BIDDING ITS OFF-THE-SHELF PROMIS DB/2 SOFTWARE.

The DOJ RFP makes it clear that the current features of PROMIS must be available in the system developed under the RFP. The RFP states on page C-56, "...the new system must provide the same functionality as the existing systems, as well as the items enumerated above, and more." Although the Department has claimed that it is not planning to

reimplement PROMIS in a relational structure, the RFP's specifications show that this is precisely what the Department has decided to do. Cf. Question and Answer 72. We have attached a chart to this protest which matches the RFP's specifications, and the capabilities of PROMIS/DB2. See Exhibit 1. With one, minor exception, this software meets all of the specifications of the RFP. Indeed, the current, hierarchical version of PROMIS meets all of the RFP's case management, file tracking and time tracking requirements. The one required feature which PROMIS currently lacks can be completed in less than 30 days.

There is simply no reason for the Department of Justice to spend money developing software which already exists. This is not a RFP which requires a vendor to add extensive capabilities to a specified case management system. Virtually all of the capabilities which the Department requires are presently available in PROMIS/DB2. Instead of waiting a year or more to complete a development effort, the Department should either conduct a competitive procurement for PROMIS/DB2 or equivalent software, or at the least allow INSLAW to propose its off-the-shelf PROMIS/DB2 package as an alternative to a development project.

As presently structured, the RFP completely prohibits INSLAW from proposing PROMIS/DB2 in DOJ's procurement. The RFP's questions and answers state categorically that the Department will not "give serious consideration to using an existing case management software that could be easily modified to meet stated requirements...." Question and Answer 61.

Off-the-shelf software is also precluded by provisions which require the vendor to give the Department title to software delivered under the contract. The "custom software, documentation, and other original products produced and provided to the Lands Division" under the RFP "shall be the sole and exclusive property of the U.S. Government....." RFP at H-8-H-9. Under Clause E-4, "Responsibility for Supplies," the RFP specifies that, "Title to supplies furnished under this contract shall pass to the Government upon formal acceptance...." The RFP also does not contain standard FAR clauses which permit vendors to supply software with restricted rights.

In addition, the RFP does not contain any provisions which would permit the Department to evaluate a solution based on off-the-shelf software. The cost evaluation is based on the offeror's fixed price quotes for development work. See RFP at B-1. There is no provision for proposing software licenses in lieu of this work. And even if there were, the RFP does not contain the minimum information required to prepare such a proposal, such as the number of licenses evaluated, the range of acceptable terms for the license, and the locations for licensed software.

Similarly, the RFP's technical evaluation does not encompass proposals of off-the-shelf software. A major portion of the technical evaluation will assess the offeror's technical approach to the RFP's tasks. RFP at M-12-M-2. Those tasks are defined as steps in software development, such as preparation of a detailed design document, development of a pilot

system and system development and implementation. Id. at C-60-62. An offeror is required to address these development steps even if he could bypass them entirely by proposing off-the-shelf software. The structure of the RFP underscores the Department's refusal in the questions and answers to consider any proposals of existing case management systems.

The Department's refusal to evaluate existing case management systems is arbitrary and irrational. This restriction violates the agency's obligations to maximize "full and open competition", 41 U.S.C. § 253a(a); FAR 10.002; to set forth requirements "in the least restrictive terms possible," FIRMR 201-11.001(b); and develop specifications "in such a manner as is necessary to maximize, and not limit, competition." FIRMR 201-30-013-1.

Moreover, DOJ's exclusion of commercial systems flies in the face of the requirement that agencies seek out and utilize commercial products when such products can sufficiently meet agency needs. FAR 11.002. The General Services Board of Contract Appeals ("GSBCA") has confirmed that:

> There is clearly a preference for such products and a requirement that the Government make reasonable efforts to provide for the acquisition of commercial products when they adequately satisfy the Government's needs.

Julie Research Laboratories, Inc., GSBCA 8919-P, June 9, 1987, 87-2 BCA ¶ 19,919 at 100,790.

The law is unequivocal regarding all competition restrictions in government procurements. An agency may not employ restrictive

requirements unless such restrictions "reflect the agency's actual minimum needs," and are "entirely necessary." International Systems Marketing, Inc., GSBCA 7948-P, 85-3 BCA ¶ 189,196, at 91,355; 41 U.S.C. § 253a(a)(2); FAR 10.002, 10.004. Where agencies have not been able to provide a clear showing that restrictive elements in their solicitations were required to meet agency needs, the GSBCA and the GAO have not hesitated to find such restrictions illegal. See Insyst Corp., GSBCA 10032-P, June 29, 1989, 89-3 BCA ¶ 22,050 ("all or none" requirement in RFP for computer software, hardware and maintenance was not adequately justified by agency and thus unduly restrictive.); PacifiCorp Capital, Inc., GSBCA 9733-P, December 7, 1988, 89-1 BCA ¶ 21,378 (single award for six computer configurations and penalty for non-manufacturer maintenance found unnecessary for agency's minimum needs and therefore unlawful); Motorola Computer Systems, Inc., GSBCA 8596-P, September 17, 1986, 86-3 BCA ¶ 19,309 (requirement for key disk system to display field number on status line as opposed to elsewhere on the screen found irrelevant to government's needs and overly restrictive); Data-Team, Inc., B-233676, April 5, 1989, 89-1 CPD ¶ 355 (agency failed to show restriction of copier machine procurement to dry-toner only machines was necessary for agency's needs).

DOJ's exclusion of currently available, commercially-owned case management software bears no relation to its minimum needs. DOJ's functional needs, as expressed in the RFP, can all be met by INSLAW's software (including use of a specified relational data base management

system) without the delay and expense of development. PROMIS not only can perform the requirements stated in the solicitation, but offers specific features and functionality that DOJ apparently considered in developing its stated requirements.

Notwithstanding the suitability of PROMIS for performing the agency's needs, the RFP, as now written, excludes INSLAW from offering its PROMIS product as a solution. This procurement's unjustified exclusion of commercially-owned systems is not unlike procurements where leasing proposals have been found to be unjustifiably excluded from competition. In Peninsula Telephone and Telegraph Co., B-192171, March 14, 1979, 79-1 CPD ¶ 176, GAO rejected an RFP that solicited only offers to sell, as opposed to offers to lease, a Naval communications system. In that case, GAO found that because the Navy could provide no reason related to its operational needs for buying a system as opposed to leasing a system, its purchase-only limitation was unduly restrictive. Id. at 2.

In this case, DOJ's minimum needs are not development and ownership of case management software. Rather, DOJ simply needs case management software to perform the functions indicated in the solicitation - - functions INSLAW's product can fully perform.

II. TO THE EXTENT THE RFP'S REQUIREMENT REGARDING 30-DAY OPERATIONAL ALTERNATIVE SOFTWARE CAN BE APPLIED TO COMMERCIAL CASE MANAGEMENT PRODUCTS, IT IS UNREASONABLY RESTRICTIVE.

As discussed above, this RFP clearly contemplates the design and development of case management software and excludes proposals to provide commercially-owned systems. The solicitation contains a provision, however, which is ambiguous at best and unduly restrictive under at least one interpretation.

With Amendment No. P004, the solicitation was modified to allow offerors to propose "an alternative relational database management product". This modification includes, in relevant part, the following statements:

> ...the government will consider an alternative relational database management product, provided that such a system will operate under MVS/XA, can be developed under CICS, and meets the other requirements set forth in this solicitation. Companies may propose an alternative software product contingent upon the use of DB2 or Oracle as an operational tool, or the alternative software may operate independently of DB2 and Oracle. <u>However, the alternative package must have been operational at a customer site(s) at least 30 days before the close of this solicitation</u>.

RFP, at C-58a, Amendment No. P004, (emphasis added).

The 30-day operational requirement in Amendment P004 appears to apply to any alternative relational database management product offered. However, to the extent that the 30-day requirement is interpreted as applying to a commercially-owned case management system that operates

under one of the specified database management products (i.e. DB2 or Oracle), it is an unreasonable and unnecessary restriction.

It is impossible to reconcile DOJ's willingness to develop case management software over a one year period with a requirement that any commercially-owned software operate under DB2 or Oracle operate at a customer site prior to submission of proposals. This requirement, if applicable, bears no relation to any agency needs and is therefore unduly restrictive. See Memorex Corp., GSBCA 7927-P, July 9, 1985, 85-3 BCA ¶ 18,289 (reliability standard in a solicitation for disk drives was not a legitimate attempt to meet the agency's minimum needs); Daniel H. Wagner, Associates, Inc., B-220633, February 18, 1986, 86-1 CPD ¶ 166 (requirements unduly restrictive when the types and durations of experience required of the contractor's personnel were found to be unnecessary in order to satisfy the government's needs.)

III. THE RFP IS WIRED FOR SOFTWARE DEVELOPMENT AND SERVICES CORPORATION.

Although the RFP specifically precludes INSLAW from proposing PROMIS, it requires offerors to demonstrate extensive amounts of PROMIS experience in order to win DOJ's procurement. These requirements have already raised concerns in the vendor community. Question and Answer 73 reflect the scope of the RFP's restrictions:

> Q73. Regarding the required Corporate Qualifications, p.C-67, why does the Contractor need to have "at least five years' experience and possess a working knowledge of PROMIS,

SAS and Easytrieve software packages, VM/CMS and MVS/XA operating systems, IBM products (such as CICS), the Wang VS system structure, and the Data General MV AOS-VS operating environment." The Contractor may need some experience in these areas, but five years seems excessive and overly restrictive. Also, why does the contractor need experience in PROMIS? PROMIS is written in COBOL. (p.C-13) Why would experience in COBOL not suffice? It would be more appropriate to require five years experience in the DBMS that will be used for implementing the new system.

A73. Corporate qualifications were identified after a careful review of the current hardware, software, and operating environments for each of our systems. It was necessary in this instance to require a substantial amount of experience due to the disparate nature of the current systems and the knowledge required to work on them. Please note, however, that, most of the personnel qualifications do not mandate this type of experience. (Emphasis added).

The last sentence of the Department's non-answer contains a serious error. In fact, PROMIS experience is required for virtually all of the positions specified in the RFP. Thus, the RFP requires the contractor to have "at least five years' experience and possess a working knowledge of PROMIS." RFP at C-67.[1] The personnel qualifications for the Project

---

[1]It is true that the RFP also states, in this section as in all of the personnel qualification sections quoted below that, "(Demonstrated equal experience is acceptable provided that such a system is a hierarchical database and that companies provide system and user documentation for Lands Division review. In addition, the company must describe in writing how such a system is comparable to PROMIS in both structure and functionality.)" See RFP at C-67-67a; See also id. at C-69, C-71, C-73, C-75. Thus, in order to justify evaluation of his alternative experience, the vendor must discuss PROMIS' structure and functionality. This basically requires PROMIS experience for the purpose of demonstrating that the vendor need not have PROMIS experience. It is also problematical as to whether a vendor could provide alternative system and user documentation for review since the circulation of such documentation is normally restricted by license. Moreover, the Department has not provided any guidance as to what software will be considered comparable to PROMIS. A vendor which does not have PROMIS experience is taking a considerable risk that the Department will consider his

Manager/Technical Analyst define as "highly desirable" "two years' experience each with PROMIS software...." RFP at C-69. The mandatory experience of the Senior Technical Systems Engineer includes, "Three years experience each with PROMIS software...." Id. at C-71. "Highly Desirable" experience for the Senior Systems Analyst includes, "Three years' experience with PROMIS...." Id. at C-73. The same level of PROMIS experience is also "highly desirable" for the Senior Programmer. In fact, the only personnel levels for which PROMIS experience is not "mandatory" or "highly desirable" are the Technical Writer and the Word Processing Specialist. As a result, it is almost inconceivable that a vendor could obtain a high technical score without extensive PROMIS experience. Such experience is heavily evaluated under the Personnel Qualifications and Corporate Experience, which notes that "Special emphasis should be given to the offeror's current (within past 3 years) experience in PROMIS, SAS, and Easytrieve....." RFP at M-2. PROMIS experience plays a significant role in technical evaluation criteria which account for 80 out of the 100 possible technical points.

But PROMIS experience would be required to compete in this procurement even if the RFP never mentioned the word "PROMIS." PROMIS experience is essential simply to bid the job. As stated above, the

---

alternative experience comparable --assuming, of course, that a vendor without PROMIS experience is able to "describe in writing" how alternative software matches PROMIS' "structure and functionality." The Department has not provided any salient characteristics, which would be required, for example, in a brand name or equal procurement, for an objective evaluation of comparability. For all practical purposes, this RFP is limited to vendors with the specified PROMIS experience.

RFP requires offerors to develop a case management system containing all the current functionality of PROMIS on a fixed price basis. Moreover, the development schedule requires an offeror to complete the development work within a year. The RFP does not contain sufficient design specifications which would permit a vendor to accurately gauge the complexity of this effort. Indeed, one vendor has already asked:

> ...Why was the System Design not identified as Phase 1 and the vendor given an opportunity to submit a fixed price proposal for this? It would be very difficult to estimate the hours and cost to develop a case management system without the System Design document, and it would seem that the Government's decision to have the same contractor do both the design and the implementation does not have the kinds of controls that Government contracts usually have. (Emphasis added).
>
> RFP, Question 67. (Emphasis added). See also Question and Answer 39.

The Department of Justice flatly rejected this suggestion. And this rejection leaves vendors with a major risk--unless they have a detailed knowledge of the PROMIS software which now runs at Justice. That version of PROMIS was developed over a period of not one but nine years. PROMIS includes hundreds of thousands of lines of code. The cost to INSLAW of development exceeds $10,000,000. An offeror who proposed, on a fixed price basis, to provide "the same functionality as the existing systems....and more" without a detailed knowledge as to how those systems are programmed would be courting disaster.

Thus, PROMIS experience is a clear prerequisite to bidding this RFP. But the RFP restricted the range of acceptable experience further by labelling as "highly desirable" experience with or knowledge of "Justice Data Center operations." See RFP at C-70, C-72, C-73a, and C-75a. This "highly desirable" criterion applies to the Project Manager/Technical Analyst, the Senior Systems Technical Engineer, the Senior Systems Analyst, and the Senior Programmer. In other words, only the Technical Writer and the Word Processing Specialist will be evaluated without regard to their experience with the Justice Data Center.

These experience requirements, and the practical constraints imposed by the requirement to bid the job on a fixed price basis, essentially limit the number of firms which can compete for the procurement to one. INSLAW is unable to compete because the Department refuses to evaluate off-the-shelf software, and requires title to any software product proposed. As the sole, legitimate source of the PROMIS software now installed at the Lands Division, INSLAW is uniquely familiar with the capabilities of third parties to develop PROMIS-like applications. In INSLAW's opinion, the RFP's experience requirements--both explicit and implicit--can only be satisfied by Software Development and Services Corporation (SDSC).

SDSC is headed by William T. Garbee, Jr. who served as INSLAW's Vice President for Software. He resigned from INSLAW in the first quarter of 1985. INSLAW believes that Mr. Garbee has recruited at least four former INSLAW employees to work with him at SDSC.

Mr. Garbee has been performing at least two PROMIS-related contracts for the Land and Natural Resources Division. In 1987, SDSC received a subcontract from Acumenics to develop a prototype for a new case management system. Earlier, in November 1986, the Land and Natural Resources Division awarded a contract to SDSC for the support and enhancement of PROMIS. The contracting officer who awarded the contract to SDSC in competition with INSLAW was Peter Videnieks. In September, 1987, the US Bankruptcy Court permanently enjoined Videnieks from any further official involvement with INSLAW because of bias against INSLAW and malice.

Thus, Mr. Garbee in particular, and SDSC in general, possess extensive PROMIS experience, as well as experience with the Justice Data Center which is required for a successful proposal. INSLAW is not aware of any other source, except itself, which possesses the requisite experience. The DOJ RFP is clearly a sole source procurement masquerading as a competitive acquisition.

The scope of DOJ's restrictions exceed any reasonable requirement. There is no need to structure the procurement so that any development contractor must assume inordinate risk in order to compete for this procurement. [2] If the Department of Justice developed an adequate

---

[2]Indeed, the effort required to develop a functionally identical system to PROMIS is so great that INSLAW has serious doubts as to whether the work can be accomplished in one year--even by a firm so intimately acquainted with PROMIS as SDSC. INSLAW seriously questions that any firm could develop an equivalent system during a year without access to PROMIS source code. Both DOJ employees and SDSC are likely to have access to this code during the period of development specified in the DOJ RFP.

specification, it would not have to rely so heavily on precisely-defined experience to insure contract performance. Similarly, the ability to propose off-the-shelf software would enhance competition for this requirement. There is no valid reason for excluding such software from consideration. Indeed, the restrictions in this RFP appear to be based not on any legitimate need of the Government, but on the Department of Justice's bias against INSLAW which has been judicially recognized on at least two occasions.

The Department of Justice simply cannot justify the extent to which it has restricted competition for this procurement. Such justifications are particularly difficult where, as here, the procurement is effectively restricted to a single source. When solicitations contain requirements that only one offeror can satisfy, or that favor one offeror, and such requirements are not clearly necessary to satisfy the agency's minimum needs, the procurement will be ruled an illegal de facto sole source. University Research Corp., B-216461, Feb. 19, 1985, 85-1 CPD ¶ 210. In University Research, the protester contended that AID's solicitation for performance of certain hospitality services was structured so that only the incumbent contractor could receive the award. GAO sustained the protest, finding that

---

INSLAW makes PROMIS source code available to all of its customers so that they can prepare custom adaptations. Although customer use of such source code is restricted by license, it is difficult for INSLAW to police all customers' compliance with the license terms. The US Bankruptcy Court has already ruled that the Department of Justice "converted INSLAW's privately-financed proprietary enhancements by trickery, fraud, and deceit...." In Re. Inslaw, Order dated January 25, 1988 at 2. This prior conduct, combined with the RFP's requirement to complete an enormous volume of code in an extremely short period raise the disturbing possibility that the DOJ 's purpose is not to develop PROMIS-like software, but to steal it.

the AID solicitation, while presented as a competitive procurement, was drafted to result in a "de facto sole-source award". Id. at 7.

Similarly, in Memorex Corp., B-213430, July 9, 1984, 84-2 CPD ¶ 22, GAO found that a procurement for data access storage devices contained requirements which were unduly restrictive because, taken together, only one firm could supply equipment to meet the requirements. The protester argued that requirements for new equipment and single density drives were not related to the government's needs, but instead inserted to restrict the competition to one vendor. GAO granted the protest, finding that the agency could not adequately justify the restrictive specifications.

Finally, in DSI, Incorporated, GSBCA 8568-P, September 22, 1986, 87-1 BCA ¶ 19,407, the GSBCA ordered cancellation of an RFP for a single vendor to supply brand-name computer hardware, applications software and maintenance services because it unlawfully restricted competition to the hardware manufacturer's entities and excluded third-party vendors. In DSI, the protester did not contest the make and model restriction, but claimed the single-vendor restriction unnecessarily precluded all third party vendors from competing. The Board agreed stating:

> We reject respondent's argument that it has obtained adequate competition. The question properly is whether it has obtained all the competition that is available, and the answer is that it has not. The CICA imposes a clear requirement that agencies undertake an affirmative effort to maximize competition.

Id. at 98,141.

In this case as well, the Department does not have any valid justification for the restrictions contained in its RFP. Accordingly, the Department must cancel its solicitation because it is unreasonably restrictive.

IV. THE RFP IS ALSO DEFECTIVE BECAUSE IT IS BASED ON FLAWED AND INADEQUATE MARKET RESEARCH.

DOJ's apparent disregard for the commercial product preferences expressed at FAR Part 11 may stem in part from its flawed assessment of available commercial case management systems. DOJ's "Requirements Study" for this procurement concluded that "none of the available commercial legal packages would meet the Land CMS requirements without substantial modification." This conclusion was reportedly made after review of several different case management software systems used commercially and by DOJ. However, the study makes no mention of INSLAW's PROMIS system which is not only widely used in the commercial marketplace, but installed in more than 40 U.S. Attorneys' Offices and the DOJ Lands Division. The authors of the study did not interview INSLAW, and apparently made no effort to determine the extent of PROMIS' relational capabilities.

Agencies are required by law to conduct acquisition planning, including "market research" in preparation for their procurements. 41 U.S.C. §253a(a)(1)(B); FAR 7.102, 10.002; FIRMR 201-11.003. The government's market research is to focus on determining the availability of

"commercial products" to satisfy the agency's minimum needs. FAR 11.004(a); FAR 10.001. Applicable regulations state in relevant part:

> Once the Government's needs have been functionally described, market research and analysis shall be conducted to ascertain the availability of commercial products to meet those needs...Market research and analysis involves obtaining the following information, as appropriate...The availability of products suitable, as is or with minor modification for meeting the need...

FAR 11.004.

The function of market research is to maximize competition for agency requirements. In TMS Building Maintenance, B-220588, Jan. 22, 1986, 86-1 CPD ¶ 68, GAO described the purpose of a market survey as follows:

> [It] is not to determine the cost benefits of contracting for services but, in accordance with the principle that agencies should achieve maximum competition, to determine if there are other qualified sources capable of meeting the government's needs.

Id. at 5.

Where agencies have failed to conduct adequate market research, resulting competitive restrictions will not be allowed. Jervis B. Webb Co., B-211724, 85-1 CPD ¶ 35 (1985) (lack of a market survey led, in part, to a finding that the agency's sole source justification was inadequate); International Systems Marketing, Inc., GSBCA 7948-P, June 19, 1985, 85-3 BCA ¶ 18,196 (brand name restrictions on modems found to be improper because agency failed to adequately assess other commercial options for fulfilling the agency's minimum needs). In sustaining the protest in International Systems Marketing, Inc., the GSBCA stated:

> [W]e conclude that respondent took little or no action to identify and to evaluate less restrictive methods of expressing its requirements for the command-driven external modems. Proper acquisition planning requires that these actions be accomplished before, and not after, a solicitation has been issued...No such analysis occurred here....

Id. at 91,355.

DOJ's acquisition planning is similarly flawed because it apparently made no effort to evaluate whether INSLAW's case management software could meet its needs. DOJ's curious omission of PROMIS from its market analysis calls into question whether its analysis was performed in good faith or was designed for competitive restrictions.

V. THE RFP IS DEFECTIVE DUE TO INCLUSION OF ERRONEOUS AND MISLEADING INFOMATION REGARDING DOJ'S OWNERSHIP OF ITS CURRENT CASE MANAGEMENT SOFTWARE

The RFP contains inaccurate and misleading information with regard to DOJ's ownership of the case management software it currently operates. In response to Vendor Question 46, DOJ stated that it owned the source code for all its systems and would make such information available to offerors. The primary system which DOJ uses is INSLAW's PROMIS software. However, INSLAW is the sole owner of all rights to the PROMIS versions now operating at DOJ. When INSLAW notified DOJ of the erroneous statement it had incorporated into the RFP, DOJ cavalierly claimed its statement applied only to the 1979 version of PROMIS software. However, this is not the current version of the PROMIS which DOJ now runs. And Question 46 specifically asked whether DOJ owns "source code

masquerading as a development effort. Indeed, the Department has even signaled a willingness to make source code available to assist vendors in performing this task. The Department's efforts to obtain case management software based on PROMIS exemplifies the type of conversion which it cannot perform according to DOJ's prior representations to GSA. For this reason alone, the DOJ RFP should be cancelled.

CONCLUSION

Based on the considerations set forth in this letter, INSLAW requests the Department of Justice to cancel the RFP, and issue a new solicitation which neither restricts competition, nor violates court orders. INSLAW reserves the right to bring this matter to the attention of the GSA Board of Contract Appeals if it is unable to obtain satisfactory relief from your office.

Sincerely,

David S. Cohen
Counsel for INSLAW, Inc.

EXHIBIT 1

REQUIREMENT	INSLAW CAPABILITY

Page C- 47

A. DEPARTMENT GENERAL SYSTEM REQUIREMENTS

The User must be able to perform the following tasks easily in an on-line mode: create a database; add, modify and delete a record; query the database; and format/print a report.	The INSLAW product provides add, modify, delete update functions. In addition, query functions are provided through the standard on-line inquiry program, PR4200, and through the FORMPAC subsystem. Output generators, including IBM's Query Management Facility (QMF) for the relational version and Generalized Inquiry Package (GIP) and Management Report Package (MRP) for the hierarchial version, are used to define and produce user-specific reports. Ability to create a database is provided through the tailoring software, DESIGN.
The User must be able to manage database elements easily, through an integrated data dictionary or an equivalent mechanism.	This is a tailoring feature of the DESIGN subsystem, in which user can define and organize the database definition.
The system must provide easy and integrated utilities and/or tools for data validation and checking during data entry and update.	The INSLAW product contains an edit facility, programs PR4400 and PR3400, to verify data entered into the database.

Page C- 48

The system must provide utilities, error messages and other facilities for validation and optimization of database designs.	The DESIGN subsystem provides users with the capability to design the database and then edit the design for error and usage.

REQUIREMENT	INSLAW CAPABILITY
The system must provide for creation and growth of databases without unreasonable size restrictions.	Database size is a factor of the relational database manager product (i.e., DB2 or Oracle). In neither INSLAW's relational or hierarchial software version is there a limit on database size.
The system must provide the capability to build and maintain a database (or series of linked databases) that will contain, at a minimum, 75,000 records.	The INSLAW product has no restriction on the number of records in the database. The database manager, either IBM's DB2 or INSLAW's hierarchial version, provides the capability to build and maintain the database. DB2 provides the additional capability of linking databases.
The system must provide commands or management features for restructuring and reorganizing a database.	A companion product to the DESIGN/tailoring programs is the Database Adjustment module, which reformats an existing database to match the new database design.
The system must include utilities, error messages and other system facilities that advise users of the status of a database (e.g., the need for reorganization, the existence of a broken index chain or pointer, etc.).	This is not applicable to the relational technology. The PROMIS hierarchical version provides database utility programs PRUTB2 and PRUTB3 to identify and correct such problems in the files.
The system must provide integral security tools to control access to databases	The INSLAW product includes a Security subsystem to control user access, through recognition of terminal ID, user ID, and password. The latter parameter defines the level of access to the database.

REQUIREME[redacted]	[redacted]SLAW CAPABILITY
The system must be capable of managing simultaneous multi-user access to a single database, including prevention of concurrent update of a single record.	The INSLAW product allows concurrent access to the database for an unlimited number of users. It does not currently prevent concurrent update of the same record. The required capability can be incorporated into PROMIS/DB2 in less than 30 days.

2. DEPARTMENT REPORTING REQUIREMENTS

The system must provide easy generation of queries and report formats. A user must have the ability to save report formats and queries for later execution.	With the INSLAW product, the user may inquire into the database using the standard on-line inquiry function or by user-defined on-line inquiries using FORMPAC. Batch reports can be defined and executed using FORMPAC and IBM's Query Management Facility (QMF), the DB2 output support tool. These definitions in FORMPAC and QMF are stored and extracted for use as needed.
The system must provide a complete array of arithmetic, date and data range, and Boolean search operations. An alphanumeric sort capability (including both ascending and descending sorts) must be integrated with system output functions.	All these capabilities are provided by QMF. The hierarchical version report products provide all but the Boolean search and some arithmetic operations.
The system must provide an output/report module with the capability to specify and construct reports with titles, column headers, and variable spacing. The output/report module must support column subtotals and totals, through a specific report function or mathematic capability.	These capabilities are provided in the FORMPAC subsystem and in IBM's QMF product for the relational software version. These capabilities are provided in the hierarchical version with the FORMPAC, GIP, and MRP modules.

REQUIREMENT	INSLAW CAPABILITY
The system must allow linking records from different logical data files for the purpose of generating reports.	This feature is provided by DB2 and QMF, since multiple database applications can be defined in DB2.
The system must be capable of extracting data and providing it to word processing software for creation of list/merge documents and special forms.	Depending on the content of the form, FORMPAC provides this capability to merge data and text. An extraction of data can be transferred to the word processing system for manipulation with a document.

3. LANDS DIVISION GENERAL SYSTEM REQUIREMENTS

The system database must include case tracking, timekeeping, and debt collection.	Case tracking and timekeeping are standard functions in INSLAW's MODULAW application produced by the PROMIS application generator. Debt Collection is a standard PROMIS function. Application can be designed using the DESIGN module and the relevant functional logic added to the database program, PR4810.
The software must operate at JDC.	The INSLAW PROMIS product currently operates at JDC. The relational version of the INSLAW product will meet the same requirements.
The system must have an on-line timesheet that can be prepared at the user's terminal.	This is a standard feature of the MODULAW application developed with SCREENPAC, INSLAW's screen design subsystem. Using SCREENPAC, the user can design special entry screens that match the workflow and data availability.

REQUIREMENT	INSLAW CAPABILITY
The system must be menu-driven for the less experienced users. However, a menu bypass will be available for frequent users.	All INSLAW application products contai this feature.
The system must be able to perform backward or forward paging, among a series of screens related to a transaction and/or a case, and to shift from a cross-reference index produced by a query to a case and return to the index or keep going from record to record selected by the query.	These inquiry features are a standard feature of the INSLAW products.

The system must be easily tailorable to accommodate the addition or deletion of data elements or records.	The DESIGN module allows the complete definition of the database, including fields and their edit criteria, records, the relationship records, and cross-references. These form the basis for the database; the user can further expand the database through the use of ad hoc SQL commands (e.g., to join multiple tables into one view) in the relational version.
At a minimum, the system must deny access to unauthorized users. This would include other Divisions that use the LINC network and persons who are not Lands employees. Within the Division, the common data elements should be available to all Lands users, but grand jury information should be protected against viewing by all sections.	This is a standard feature of the Security subsystem. If certain information is restricted, additional security can be defined for that information.

REQUIREMENT	INSLAW CAPABILITY
The system must allow for global or mass replace capability, i.e., attorney reassignments.	Global update programs for reassigning cases have been developed for INSLAW customers; these routines typically supply a closing date for the attorney assignment and create a record for the new attorney assignment.
Update of the files must be possible both from on-line entry and in batch.	The Batch Update package is a supplemental offering from INSLAW. Data can be entered into the database either through the on-line programs PR4300 and PRENM4 linking to PR4810 or through the Batch Update Module using the database program PR3810. In the relational version, programs PR4810 and PR3810 provide the link into DB2.
The system must have a user-defined help capability built into the system and to allow the user to display table values. If this feature is available, restricted access for updating the table is required.	Field Help is a standard INSLAW feature and displays field criteria and related coded values for that field. A Help feature is also provided for leading the user through the menu screens. Restricted access to translation (code) tables is handled through the Security package. Updates to these codes are not permitted through the Help feature, but through the update functions provided by programs PR4300 and PRENM4.
During the update and retrieval process, prompts (help screens) must be available to guide users. Commands to identify error messages, system malfunctions, or edits must be clearly understood. Code-oriented language should be avoided.	Help screens are a standard feature of the relational version of the software. The menu screens eliminate use of code-oriented language. Error messages are displayed to the user explaining the edit condition. These messages as they relate to database edits can be code values or literal messages.

REQUIREMENT	INSLAW CAPABILITY
The system must have provisions for retiring old cases and records to a history file. There must be a mechanism to return the cases and records on-line once they are retired to the historical file.	The Purge programs enable data to be transferred to a history/archive file; either no records or only a skeletal set of records will be retained in the on-lin database. The records to be purged and those to be left in the on-line database, plus the timeframe for purge eligibility are defined by the user. The program PRUTB4 allows addition of a case from the history file back to the on-line database.

The system must provide for relational edits on any data field. For example, the system must be able to check that, if a complaint is filed, a date or filing party is also entered.	The INSLAW products provide edits at field, related fields or database levels. Standard field edit (e.g., type, length, future date) are included in the edit programs, PR4400 and PR3400. The edits particular to the application are coded by a programmer and compiled into the program.
The system must be able to handle the manner in which Lands counts its cases and matters, with particular attention to tract consolidations and appellate processing.	The PROMIS system used by Lands, provides these capabilities. Logic such as this is coded specifically for each application and added to the database programs, PR4810 and PR3410. QMF can also be used to support the case and matter counts.
It is highly desirable that the system be able to respond to a user request to update or query the database within 5-10 seconds at most.	The INSLAW product typically has a 1-2 second response time. SCREENPAC updates may take longer depending on the volume of data to be added. Response time is closely tied to the configuration and size of the computer and the number of active applications and users on the system.

REQUIREMENT	INSLAW CAPABILITY
The system must provide a mechanism for automatic restart and recovery for both batch and on-line processing in the event of loss of data, network interruption of operations (system crash), or any other abnormal termination. Every precaution must be taken to assure that data are not lost.	Since DB2 is the database manager utilized by the INSLAW relational products, recovery and restart are provided by the product. On-line recovery is used in conjunction with CICS, the teleprocessing monitor. The hierarchical version provides its own recovery procedures.
A usage monitor that can be turned on or off during systems operation is desirable for analyzing system usage for optimizing the design. It should gather statistics on how many records and which record types are being accessed or updated by which terminals and how often certain reports are generated.	The INSLAW product includes program PRUTB2 which provides counts by record type, so database growth and activity can be monitored. A log file provides an audit of all on-line updates and, optionally, inquiries. Reports can be written to provide statistics specific to the user's needs. CICS also provides usage information at the transaction and file levels.

The system must contain or be able to access easily some type of text retrieval software.	This feature is currently available in the relational version of the INSLAW software products and will be available in PROMIS/DB2.

4. LANDS DIVISION REPORTING REQUIREMENTS

It must be possible to view on-line the entire case history of a particular case from the time it is opened until it is completed. Access through a specific case will be through DOJ case numbers.	This is a standard inquiry feature in the INSLAW product. The user can specify an inquiry on any type of record. If this inquiry is at the case level, all records related to that case are presented in the inquiry.

REQUIREMENT	INSLAW CAPABILITY
It must be possible to view on-line certain segments of a case, i.e., attorney assignments, filings, dispositions, etc.	The user designates the specific type inquiry to be provided by program PR4200. A specific record can also b retrieved by its key value. A FORMPA inquiry can also be defined for a more concise inquiry.
The system must be capable of allowing on-line design of specially-tailored screens and forms.	This is a standard feature of the SCREENPAC and FORMPAC subsystems.
The system must have some type of simple graphics.	Graphic support would be provided through the current products Lands no has, Menutrend and Trendview.
The system must have some type of statistical reporting capabilities, so that SAS-type reports can be generated.	This is a standard capability available through QMF in the relational version o the software; it is available through the MRP report package in hierarchical version.
The system must have the ability to generate and print standard reports in the sections.	FORMPAC and QMF can be used to define section-specific reports. On-line case-related and FORMPAC inquiries ca be directed to specific printers. Likewise, a printer designation can be defined in a QMF report.
The system must have the capability to retrieve hard copies of timesheets from previous months or fiscal years; a storage capability must be designed for the timesheets.	Storage and on-line retrieval of time information is a standard feature of the MODULAW application. The format for the retrieval can be defined with the FORMPAC package.

Options to specify both field truncation and field wrapping within print columns are desirable for reports.	QMF provides this capability. The hierarchical versions of the INSLAW software provided field truncation using subfield definitions in the Generalized Inquiry package.
The system must have a common language suitable for a trained lay person to use in generating reports.	This is a standard aspect of packages, whether INSLAW or other vendor provided.
The system must be able to count recurring values in records. For example, how many briefs were filed per case, per section, per fiscal year, per judicial district, etc.	This is a standard feature provided by the report packages.
The system must allow display of multiple record types on a screen as well as in a report format. For example, if for any given case all settlement information is requested, the system will display both general case information and various records associated with the settlement history.	This is a standard INSLAW inquiry capability. In addition, specially formatted screens can be designed with the FORMPAC subsystem.
The system must be able to identify and count null values, i.e., instances where no briefs were filed or instances where information is not available in the system (cases with no priorities), or instances where no record has been entered (cases with no attorney records).	This is a standard feature of QMF, based on the selection criteria defined by the user for a report. The Generalized Inquiry Package in the hierarchical PROMIS product also provides this capability.
The system must be able to sort on any data element and to total on any decimal and numeric fields. The ability to customize a sort ascending/descending is required.	This is a standard feature of QMF, based on the selection criteria defined by the user for his report. The Generalized Inquiry Package in the hierarchical PROMIS product also provides this capability.

REQUIREMENT	INSLAW CAPABILITY
The system must be able to identify shared cases (between Assistant United States Attorneys and the Division, and between Divisions).	This is a standard feature of the MODULAW application, allowing multiple attorney assignments for a case. The Government Rep record in Lands PROMIS provides this information. This definition can be tailored into the database design using the DESIGN module.
The system must provide the capability to capture the number of cases pending (active) during a particular time frame.	This is a standard feature available through the report packages and on-line cross-references defined in the application.
The system must be able to age cases by various stages of litigation.	This is a standard feature in the INSLAW applications and is based on Docket entries.
Because the new system will combine case tracking and timekeeping functions, the system must generate/identify cases that are resource intensive.	Standard report packages can flag resource intensive cases based on user-defined criteria.
The system must provide case specific information for terminal viewing and report retrieval such as: - cases opened and closed during a fiscal or calendar year; - number of trials versus number of settlements during a fiscal or calendar year; - number of cases on appeal and how many times it has been appealed; - information by statute, status, priority, district/court, opposition, agencies, etc.' - number of fines, penalties, judgments, settlements, outcomes, and amounts; - number of criminal cases versus civil cases and defensive cases versus affirmative cases; - comparisons between claims and awards.	This is a standard capability of the relational and hierarchical report packages or on-line inquiry. The INSLAW product also allows for the definition of summary fields that calculate counts, case status, etc., within a case. This feature provides even more relevant data during an inquiry.

Exhibit D

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

IN RE INSLAW, INC., Debtor-in-Possession	Bankruptcy Case No. 85-0070 Judge James F. Schneider
INSLAW, INC., Plaintiff, v. UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	Adversary Proceeding No. 86-0069

DECLARATION OF KIER T. BOYD

1. My name is Kier T. Boyd. I am the Deputy Assistant Director, Technical Services Division, Federal Bureau of Investigation.

2. I am making this declaration in accordance with the provisions of 28 U.S.C. §1746 and in response to statements made in Inslaw Inc.'s February 7, 1991 Supplemental Submission In Support Of Motion For Leave To Take Limited Discovery ("Supplemental Submission") and in the February 18, 1991 Second Supplemental Submission Of Inslaw In Support Of Its Motion To Take Limited Discovery ("Second Supplemental Submission") respecting a) a letter which I sent Terry D. Miller on January 25, 1991, in response to a letter which Mr. Miller had written to the Director of the FBI on January 9, 1991 and b) a letter which I sent Mr. Miller on February 11, 1991, responding to letters which he had sent to me and to the Director on February 5, 1991.

EXHIBIT B

Copies of Mr. Miller's letter of January 9, 1991, and my January 25, 1991 reply are attached as Exhibit B to the Supplemental Submission; copies of Mr. Miller's letters of February 5, 1991, and my February 11, 1991 reply are attached as Exhibit C to the Second Supplemental Submission.

3. I am informed by counsel for the Department of Justice that Inslaw offers my letters as evidence that the Department violated an injunction entered by this Court on January 25, 1988, which, among other things, enjoins the Department:

> from any further expansion of the use of INSLAW's proprietary enhancements in any office in which DOJ does not currently utilize the enhanced version of PROMIS

4. Mr. Miller's letter of January 9, 1991, to the Director states in part:

> I Have [sic] reason to believe that the software that your agency uses throughout the U.S. -FOIMS- is stolen.

The letter does not mention PROMIS nor does it give any specifics whatsoever respecting this sweeping allegation. It does not, for example, state from whom the FOIMS software was allegedly stolen, when it was allegedly stolen, and whether he believes that all, or only a portion, of FOIMS was stolen.

5. My January 25, 1991 reply to Mr. Miller seeks these and other details respecting his claim.

6. Mr. Miller's letters of February 5, 1991, do not provide the requested details. Instead, they characterize my reply as "defensive", state that I am not "independent", and conclude that I am not the "appropriate point of contact on this matter."

7. After receiving Mr. Miller's letter of February 5, I learned that he is a friend of Mr. Hamilton, and it seems obvious that he is attempting by his letters to aid Mr. Hamilton in this litigation. Offering my January 25, 1991 letter to Mr. Miller in support of the proposition that the FBI is or may be using PROMIS software is, in my judgment, totally unwarranted because nothing in Mr. Miller's letter of January 9, 1991 (to which my January 25 letter responds) indicates that PROMIS software is the subject of his inquiry. Neither through Mr. Miller's letter nor any collateral information in my possession was I aware, at that time, of a connection between Mr. Miller's inquiry and the Inslaw case. Upon receipt of Mr. Miller's February 5 letter, I resolved to cease efforts to cooperate with him and decided to deal, instead, with the court having jurisdiction over that case.

8. Accordingly, my February 11, 1991 letter informs Mr. Miller that this Court is the appropriate forum for adjudicating the issues between the proper parties. Contrary to the assertion made in Inslaw's Second Supplemental Submission, the FBI is both able and willing to address the issue of PROMIS software, but not with a third party operating outside the boundaries of the litigation.

9. Referring to my first letter to Mr. Miller, Inslaw's Supplemental Submission asserts:

> What is significant about this reply is that it does <u>not</u> deny the allegation. [emphasis in original]

10. Referring to both of my letters to Mr. Miller, the Second Supplemental Submission states:

> Mr. Boyd makes it clear that the FBI now is unable or unwilling to provide assurances that pirated software is not included in the case management information system used by FBI field offices, i.e., in the FBI's FOIMS (Field Office Information Management System).

11. I would like to make two responses to these assertions. First, the implication that my failure to deny Mr. Miller's unsupported allegations should in any way be taken as evidence that the allegations are true is unwarranted. I asked Mr. Miller for additional information simply because I believed that was the most sensible and courteous way in which to resolve his vague and unsubstantiated allegations. I have absolutely no reason whatsoever to believe that any portion of FOIMS was stolen.

12. Second, since learning of Inslaw's assertion respecting PROMIS, I have reviewed the matter with the FBI staff responsible for the development of FOIMS from September 1977 to the present. On the basis of that review, I can state that a) the FBI does not use, nor has it ever used, the enhanced version (or any other version) of PROMIS and that b) FOIMS was developed entirely by the FBI in-house; it is not based on and does not contain the enhanced version (or any other version) of PROMIS -- or any portion thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 1991.

KIER T. BOYD

Referral/Consult

3) [redacted] (phonetic) - an arms dealer who spoke at length with CASOLARO concerning various aspects of the "Octopus". [redacted] may also have been involved with the CAPIZONE indians in the assembly of weapons for the Contras.

4) [redacted] (phonetic) - may be [redacted] Mr. RICHARDSON learned [redacted] was involved in the "October Surprise" and is believed to have been involved in the sale of PROMIS to foreign intelligence agencies. b6 b7C

5) [redacted] (phonetic) - [redacted] Mr. RICHARDSON noted that CYRUS HASHEMI was a former client of Mr. RICHARDSON's who was involved in efforts to gain release of U.S. hostages in the Middle East. CYRUS HASHEMI's role concerning the U.S. hostages was confirmed to Mr. RICHARDSON by former U.S. Assistant Attorney General BEN POTTINGER. After the death of CYRUS HASHEMI, Mr. RICHARDSON learned from [redacted] that CYRUS HASHEMI was also involved in the "October Surprise" and was the reason the Iran-Contra scandal came to light.

Mr. RICHARDSON noted that information provided by these witnesses indicating a possible relationship between the INSLAW, the "October Surprise" and Iran-Contra matters "adds a dimension of seriousness whether determined to be true or not and should be considered for investigation".

Mr. RICHARDSON advised he would prepare additional material for the interviewing agents. This material will identify additional witnesses and document additional statements made by [redacted] concerning contacts with DANNY CASOLARO. This material will be provided in the near future.

b6
b7C

COPY

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - - - x

INSLAW, INC., :

Petitioner, :

- against - : 89 Civ. ____

DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE, :

Respondents. :

- - - - - - - - - - - - - - - - - - - x

PETITION FOR A WRIT OF MANDAMUS

I

Jurisdiction and Venue

1. This is an action for mandamus over which this Court has jurisdiction pursuant to 28 U.S.C. § 1361. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(e).

II

Parties

2. Petitioner INSLAW, Inc. ("INSLAW") is a Delaware corporation with its principal place of business in the District

of Columbia. Its business is designing, manufacturing, marketing and maintaining computer software.

3. Respondent Dick Thornburgh is the Attorney General of the United States.

4. Respondent United States Department of Justice ("DOJ" or "the Department") is an agency of the United States government.

III

Facts

5. INSLAW was founded in January, 1973 by William A. Hamilton as a nonprofit corporation to conduct research and development in the field of criminal justice. With the help of grants from the Law Enforcement Assistance Administration ("LEAA"), a division of the Department, INSLAW developed case-management software called the Prosecutor's Management Information System ("PROMIS"). Congress decided in 1980 to terminate the LEAA. PROMIS was then being used in District Attorneys' offices in large metropolitan areas throughout the United States and on a pilot basis in two large U.S. Attorneys' offices. So as to make possible the continuation both of service to PROMIS users and the funding of improvements in the software, Hamilton founded in January, 1981 a for-profit corporation with the same acronym. The new corporation acquired from the nonprofit corporation substantially all of its assets, except for PROMIS itself, which was in the public domain. Between January, 1981 and March, 1982

the new INSLAW developed a substantially enhanced version of PROMIS, which has since been further improved. This version of PROMIS is proprietary. At no time during the period addressed by this petition has any other software performed the function of case management as well as it is performed by PROMIS.

6. In March, 1982 INSLAW entered into a three-year, $10 million contract with DOJ to introduce the public-domain version of PROMIS into the United States Attorneys' Offices. Claiming that INSLAW had no title to the enhanced version of PROMIS, DOJ officials threatened to withhold payments under the contract unless INSLAW turned it over to DOJ. On the advice of its own procurement counsel, DOJ modified its contract with INSLAW in April, 1983 and agreed to pay license fees to INSLAW if and when DOJ decided to use the enhanced version of PROMIS in the U.S. Attorneys' Offices.

7. In May, 1983 DOJ officials initiated a series of contract disputes with INSLAW. These were sham disputes concocted as pretexts for withholding month by month increasingly larger amounts of money due under the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW, thus forcing INSLAW to seek Chapter 11 protection in the Bankruptcy Court for the District of Columbia.

8. In June, 1986 INSLAW brought suit in the Bankruptcy Court charging DOJ with violations of the automatic stay entered on February 7, 1985, including, inter alia, the assertion of control over INSLAW's proprietary version of PROMIS

and the failure to take positive steps to curb the persistent efforts of certain DOJ officials to inflict harm on INSLAW. This suit was tried in the summer of 1987. On January 25, 1988 the Bankruptcy Court rendered judgments in favor of INSLAW in the amount of $6.8 million plus counsel fees. The Court's principal findings are attached hereto as Exhibit A. The most important of these was that DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." The Court also found that the main instigator of this wrongdoing was the PROMIS Project Director, C. Madison ("Brick") Brewer, a former INSLAW employee fired by Hamilton several years earlier; that DOJ officials, acting on a decision "consciously made at the highest level," ignored plain indications of vindictiveness toward INSLAW on the part of Brewer and his subordinates; and that a reason for this disregard was that D. Lowell Jensen, who rose from Assistant Attorney General to Deputy Attorney General between 1981 and 1986, was biased against INSLAW.

9. Among the Bankruptcy Court's additional findings were that DOJ officials, having driven INSLAW into Chapter 11, then "unlawfully, intentionally and willfully sought to cause the conversion of INSLAW's Chapter 11 reorganization to a Chapter 7 liquidation case without justification and by improper means" and that this attempted conversion was masterminded by Thomas Stanton, Director of DOJ's Executive Office for United States Trustees.

10. On November 22, 1989, this Court affirmed the Bankruptcy Court's judgments and, in an accompanying memorandum, stated that "after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court." This Court also found it "strikingly apparent . . . that INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work." Even the undisputed facts, the Court added, drew it to "the same conclusion reached by the bankruptcy court; the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract."

11. The combination of high-level hostility and lower-level vindictiveness does not sufficiently account for the persistence and tenacity of the attempts to wrest control of PROMIS from INSLAW. These began with DOJ's refusal to recognize INSLAW's ownership of enhanced PROMIS. Then came an offer from Hadron, Inc., a software company controlled by a long-time friend of Edwin Meese, to buy INSLAW. When Hamilton refused the offer, the chairman of Hadron said, "We have ways of making you sell." Soon thereafter a New York-based venture capital firm, following a meeting with a businessman who claimed to have access to the highest levels of the Reagan administration, tried to induce the

Hamiltons to turn over to the firm their voting rights in INSLAW's common stock. When the contract disputes forced INSLAW to seek the protection of Chapter 11, Stanton attempted to push INSLAW into liquidation. After this failed, DOJ officials enccuraged a Pennsylvania-based computer services company to launch a hostile takeover bid for INSLAW.

12. On information and belief, these attempts to acquire control of PROMIS were linked by a conspiracy among friends of Attorney General Meese to take advantage of their relationship with him for the purpose of obtaining a lucrative contract for the automation of the Department's litigating divisions. Among the facts pointing to the existence of this conspiracy are the following:

(a) Between 1958 and 1966, Edwin Meese and D. Lowell Jensen served together in the Alameda County, California, District Attorney's office. From 1966 to 1974 Meese was a key aide to Governor Ronald Reagan. From 1970 to 1975 Dr. Earl Brian served in Governor Reagan's Cabinet. In January, 1981 Meese became Counsellor to President Reagan. In 1981 and 1982 Brian served in the White House as the chairman of a task force which reported to Meese.

(b) When Meese joined the Reagan administration, Brian was the controlling shareholder in Biotech Capital Corporation. Biotech controlled Hadron, Inc., a company which specialized in integrating computer-based information

management systems. This was the company which tried to buy INSLAW.

(c) Mrs. Meese bought stock in Biotech's first public offering with money borrowed from Edwin Thomas, soon to be an aide to her husband. Brian lent Thomas $100,000 for the purchase of a house in Washington. Mrs. Meese later bought stock in American Cytogenetics, another Brian company.

(d) In June, 1983 a DOJ "whistleblower" warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install PROMIS in every litigation office of DOJ. According to a statement made to Judge Jane Solomon of the Civil Court of the City of New York, Stanton's attempt to force INSLAW into liquidation was part of a "conspiracy to get the INSLAW software." Several high-level DOJ officials spoke of DOJ's determination to "get" or "bury" INSLAW. One DOJ employee said that Jensen was behind this effort. A second attributed the award to Hadron of a $40 million computer services contract for litigation support in the Lands Division to the influence of a Deputy Assistant Attorney General with close ties to Meese. Other DOJ employees connected Meese, Brian, and Hadron with the harassment of INSLAW and the attempt to acquire PROMIS.

13. When Meese became Attorney General in February 1985, he and Jensen took steps to meet DOJ's long-recognized need

for comprehensive case-management systems. A request for proposals was announced on May 25, 1986. The initial cost estimates for this procurement, code-named "Project Eagle," exceeded $200 million; options to expand the contract could increase the cost to three or four times this amount. The request for proposals contained no provision for the acquisition or development of case-management software. The Project Eagle computers would be largely wasted without this software. Undisclosed provisions of the Project Eagle procurement did in fact mandate technical specifications for the use of PROMIS. DOJ's failure to publish a specific requirement for case-management software implied an understanding that the winner of the Project Eagle contract would be an entity which already controlled such software, i.e., PROMIS.

14. In late April, 1988, Ronald LeGrand, Chief Investigator of the Senate Judiciary Committee, telephoned Hamilton. LeGrand said that he was calling at the request of an unnamed senior official in DOJ whom he had known for 15 years and regarded as completely trustworthy. According to this official, the INSLAW case was "a lot dirtier for the Department of Justice than Watergate had been, both in its breadth and its depth." The official asked LeGrand to inform the Hamiltons that the Justice Department had been compromised on the INSLAW case at every level, and that Jensen had engineered INSLAW's problems right from the start. The official also said that senior career officials in the Criminal Division knew all about this

malfeasance but would not disclose what they knew except in response to a subpoena and under oath. LeGrand has since told Hamilton and others that his informant would come forward only if assured of protection against reprisal.

15. The factual basis for the foregoing allegations is detailed in the affidavit of William A. Hamilton appended hereto as Exhibit B. Respondents are aware of most of these facts. Some are set forth in the Bankruptcy Court's findings of fact; some are contained in a written statement furnished to the Public Integrity Section of DOJ's Criminal Division (the "Section") in February, 1988 by William Hamilton and his wife; many are recapitulated and supplemented in a letter of May 11, 1989 to Attorney General Thornburgh from Elliot Richardson, one of INSLAW's counsel, which is appended hereto as Exhibit C.

16. On May 4, 1988 the Section informed INSLAW that it would investigate some of the allegations made by the Hamiltons and their counsel. On July 18, 1989, the Section notified INSLAW that its investigation of INSLAW's allegations "has been completed and that prosecution has been declined, due to lack of evidence of criminality." The Section had not in fact conducted a comprehensive, thorough, or credible investigation. INSLAW has stayed in touch with all of the individuals who have furnished information on which the allegations made in this petition are based and since December 10, 1989 has communicated with all but four of them. Each has again been asked whether or not any anyone representing DOJ has communicated or attempted to communicate

with her or him. The only one who responded affirmatively is Judge Jane Solomon. On December 11, 1989, LeGrand told INSLAW that DOJ had not to date made any attempt to obtain from him the identity of his informant. Although William Hamilton's detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, DOJ has never sought to interview him. On information and belief, DOJ has not attempted to obtain relevant documents, correspondence, notes, appointment calendars, or telephone logs from any of the individuals or entities identified in Exhibit B and has ignored the leads called to its attention in Exhibit C.

17. Respondents have a clear duty under the Constitution and laws of the United States to take care that the laws are faithfully executed. This duty embraces responsibilities both to enforce the criminal laws and to conduct civil litigation fairly. Respondents' duty to enforce the criminal laws obliges them, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. Respondents' duty of fairness toward citizens with whom they are engaged in litigation requires them to develop a full and fair record and to refrain from instituting or continuing litigation that is demonstrably unfair. By failing and refusing to conduct a sufficient investigation in this matter, respondents have breached and neglected these duties in a manner

that cannot reasonably be defended as falling within the legitimate scope of their discretion.

18. The Department's failure and refusal to conduct an adequate criminal investigation or to examine conscientiously the merits of INSLAW's contract claims has forced INSLAW to retain lawyers and private investigators and to expend countless hours of its staff's time in an effort to discover information that would have been obtained by respondents if they had properly performed their duties. Respondents' insistence, in spite of court orders to the contrary, that INSLAW is in the wrong has delayed the vindication of INSLAW's performance under the contract. This delay has wrongfully damaged INSLAW's reputation and has resulted in an irreparable loss of both public and private sector contracts and opportunities to obtain other business, to make additional improvements in its software, to maintain the software currently being utilized by 42 U.S. Attorneys' Offices, and to provide software to other units of the Department. INSLAW's burden has been increased by respondents' obstructive tactic in obtaining a court order denying INSLAW access to subpoena power and discovery proceedings while the government's appeal from the Bankruptcy Court judgment was pending. Even after this order has been lifted, respondents' failure to carry out their duties will continue to cause further injury to INSLAW in all the above-mentioned ways. Moreover, while neglecting to investigate their own wrongdoing, respondents sought and obtained court authority for the government to audit

for the eighth time INSLAW's performance under the PROMIS contract. This redundant audit has diverted the time and energy of INSLAW's management from the effort to rebuild the company and has forced INSLAW to incur significant additional legal and accounting expenses.

19. INSLAW has exhausted all the available administrative means of inducing respondents to conduct a fair and thorough investigation. Petitioner requested the appointment of an independent counsel pursuant to the Ethics in Government Act; this request was denied on May 4, 1988. INSLAW's attempt to stimulate the Public Integrity Section to take appropriate action ended with the Section's letter of July 18, 1989 declining prosecution. INSLAW's counsel wrote the Department on August 10, 1989 calling attention to the inadequacies of the Section's purported investigation, but DOJ refused to reopen the matter. INSLAW then sought review by the Special Division of the Circuit Court of Appeals for this District of respondents' failure to appoint Independent Counsel, but the Division concluded that it lacked jurisdiction over this request. DOJ has never replied to Exhibit C. Respondents possess investigative resources and powers vastly more extensive than those available to INSLAW but have resisted every effort to persuade them to make adequate use of those resources. Only respondent Thornburgh can assure DOJ employees otherwise willing to tell the truth that their doing so will not cost them their jobs. Until and unless respondents are ordered to carry out a proper investigation, INSLAW will continue

to be the victim of their persisting unfairness. Petitioner has no adequate remedy other than the relief hereby sought.

IV

Claim for Relief

20. Petitioner realleges and incorporates herein by reference the allegations in paragraphs 1 through 19 as if fully set forth herein.

21. DOJ has failed and refused to pursue the specific factual findings of the Bankruptcy Court, since affirmed by this Court, that DOJ officials "took, converted, stole" INSLAW's computer software product through "trickery, fraud and deceit."

22. DOJ has failed and refused to investigate the additional allegations of serious malfeasance on the part of DOJ officials and others made by INSLAW and supported by INSLAW's detailed and credible submissions to the Department.

23. DOJ's decision to forego and refuse a serious investigation into the Bankruptcy Court's findings and INSLAW's additional charges reflects the direct and irreconcilable conflict of interest which plagues DOJ's exercise of its investigative and prosecutorial functions in this matter.

24. The evidence assembled by INSLAW cries out for a comprehensive, thorough, and hardhitting investigation going beyond what INSLAW has been able to do with its own limited resources and drawing upon the full array of DOJ's legal powers and professional skills. INSLAW's allegations are more than

sufficient to call upon DOJ to fulfill its responsibilities toward the firm and impartial enforcement of the criminal law and the fair assessment of INSLAW's claims.

25. DOJ has not carried out the aforesaid responsibilities. It has not conducted the kind of investigation that would be necessary in order to determine whether or not DOJ officials were part of a conspiracy to destroy INSLAW. DOJ's refusal to do so is arbitrary and capricious and contrary to the public good. It has thus abused its discretion in a fashion causing serious harm to petitioner and thereby entitling petitioner to the extraordinary relief herein requested.

WHEREFORE, your petitioner prays that this Court issue an order in the nature of mandamus:

(i) compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW;

(ii) requiring respondents to place direction of the investigation in the hands of an attorney who has had no previous involvement in the case;

(iii) prohibiting any individual who participated in any previous purported investigation of these matters from participating in the Court-ordered investigation; and

(iv) directing respondents to submit to the Court from time to time reports of their progress in the Court-ordered investigation and, upon its completion, a final report.

Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By: Elliot L. Richardson

Elliot L. Richardson
D.C. Bar No.: 308718
1825 Eye Street, N.W.
Washington, D.C. 20006
(202) 835-7500

William E. Jackson

William E. Jackson
D.C. Bar No.: 110692
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Attorneys for Petitioner
INSLAW, Inc.

Of Counsel:

Charles R. Work

Charles R. Work
D.C. Bar No.: 61101
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
(202) 887-8000

COPY

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

TABLE OF CONTENTS

TABLE OF CASES, STATUTES & OTHER AUTHORITIES

Cases

Constitution of the United States

Statutes

Other Authorities

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

INSLAW, INC.,	:	
Petitioner,	:	
- against -	:	89 Civ. ____
DICK THORNBURGH, as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT
OF INSLAW'S PETITION FOR A WRIT OF MANDAMUS

Petitioner, INSLAW, Inc. ("INSLAW"), respectfully submits this memorandum in support of its petition, pursuant to 28 U.S.C. § 1361, dated December 22, 1989, for a writ of mandamus directing respondents, Attorney General Dick Thornburgh and the United States Department of Justice (the "Department"), to conduct a fair and thorough investigation of the matters alleged in the petition and its attachments and to assign responsibility for that investigation to individuals who have had no previous involvement with those matters.

STATEMENT OF THE FACTS AND THE NATURE OF THE CASE

INSLAW is a case-management software company founded and managed by William A. Hamilton and his wife Nancy. In an action brought in the United States Bankruptcy Court for the District of Columbia, INSLAW charged the Department with unlawfully attempting to destroy INSLAW and take over its case management software. In that action, the Court found that Department officials "took, converted, stole" INSLAW's software through "trickery, fraud, and deceit." Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Sept. 28, 1987). After subsequent hearings, the Court awarded INSLAW $6.8 million in damages. Inslaw, Inc. v. United States, Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 9 (Bankr. D.D.C. Feb. 1, 1988).

The Department appealed to this Court. This Court affirmed the Bankruptcy Court judgments, noting:

> It is sufficient to state that after careful review of all of the volumes of transcripts of the hearings before the bankruptcy court, the more than 1,200 pages of briefs and supporting appendices and all other relevant documents in the record, there is convincing, perhaps compelling support for the findings set forth by the bankruptcy court.

United States v. Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 37 (D.D.C. Nov. 22, 1989). The Court added that even the undisputed facts compelled it to draw "the same conclusion reached by the bankruptcy court; the government acted

willfully and fraudulently to obtain property that it was not entitled to under the contract." Id. at 40.

The Bankruptcy Court found that the Department's attempt to destroy INSLAW was manipulated by the Department's contract manager, a discharged INSLAW employee whose vindictiveness should have been curbed by his superiors. Later-discovered information points to an even uglier scheme in which friends of the then Attorney General sought to take advantage of their relationship with him in order to obtain a lucrative contract for the automation of the Department's litigating activities. INSLAW's case-management software was essential to this scheme, and to acquire it the conspirators resorted to unscrupulous means, up to and including "trickery, fraud, and deceit." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). INSLAW submitted evidence of this scheme to the Department in February, 1988 and supplied corroborative information, much of it obtained from present and former Department employees, in May, 1989.

The Bankruptcy Court findings should in themselves have spurred the Department to take swift corrective action. It was foreseeable, however, that this would not only expose widely ramified criminal conduct on the part of Departmental employees but also make the Department liable for punitive and consequential damages much larger than the $6.8 million already awarded. The less the Department knew of the facts, the more easily it could rationalize the nonperformance of duty and minimize these risks. The Department could not completely duck an investigation, but it

might get away with a superficial one. Taking that chance, the Public Integrity Section of the Criminal Division initiated a cursory review of INSLAW's charges but made no serious attempt to determine their validity.

Respondents have a duty both to enforce the criminal laws and to be fair to civil litigants. It is scarcely conceivable that they will challenge this proposition. In opposing INSLAW's petition, they will thus be forced to argue that when the Public Integrity Section closed its so-called "investigation," the Section was acting within the scope of its discretion. This argument can be supported only on one of two grounds: either (1) that the facts alleged in INSLAW's petition are not true or (2) that these facts do not add up to a showing of wrongdoing sufficient to compel a thorough investigation. Neither contention is sustainable.

Respondents would be in a position to challenge the truth of INSLAW's allegations only if they had investigated them. At the very heart of INSLAW's petition, however, is the allegation that the Department has not made a serious effort to find out whether or not INSLAW's factual allegations are true. Corroborated as these allegations are by the testimony of the Department's own present and former employees, they will be difficult to overcome. For respondents to contend, on the other hand, that INSLAW's factual allegations are insufficient on their face to portray an abuse of discretion would trivialize both the Bankruptcy Court's findings of serious wrongdoing, which this

Court has affirmed, and the even more sinister malfeasance adumbrated by this petition and its attachments.

Being unable either to discredit INSLAW's allegations or to diminish their impact, the Department may then fall back on the assertion that the adequacy of its investigations, whether for the purpose of criminal prosecution or of civil litigation, is unreviewable as a matter of law. But that, as we shall point out below, is a position that has no support in the relevant cases.

The petition and its attachments lay out in detail the shortcomings of the Department's purported investigation. If the Department had done no more than match INSLAW's own investigative effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information that INSLAW obtained. The Department did not do any of these things. On the contrary, it wound up a superficial inquiry without contacting more than one of INSLAW's key witnesses, without following up any of the leads furnished to it by INSLAW, and without attempting to obtain the most obviously relevant documents and correspondence. Given these gross deficiencies, respondents cannot plausibly claim that they fulfilled either their duty to enforce the criminal laws or their duty of fairness in the conduct of civil litigation.

INSLAW does not contend that the facts it has assembled are sufficient to prove a criminal conspiracy. It does contend, however, that these facts, coupled with the Bankruptcy Court's findings, create an imperative need for a thorough, hardhitting,

and impartial investigation. Despite a great deal of time and expense devoted to developing a full explanation of the Department's malfeasance, INSLAW has not been able to pursue all the indicated leads, talk to all the available witnesses, or examine all the relevant documents. And even after the restraining order that prevented INSLAW from conducting discovery proceedings has been lifted, INSLAW still will not have means of obtaining critically important testimony anywhere near comparable to those at the command of the Department.

Against this background, the Department's statement of July 18, 1989 that its investigation had been terminated "due to lack of evidence of criminality" cannot be accepted at face value. The termination is better explained on the basis that the Department felt trapped by a conflict of interest. At the time of the statement the Civil Division was resisting INSLAW's claims on grounds which, had they been thoroughly investigated by the Criminal Division, might well have been found to be lacking in merit. The Department's duty to investigate the charges of a criminal conspiracy involving its own employees clashed with its interest in minimizing or defeating the civil damage claims against the Department. The Bankruptcy Court's findings and INSLAW's allegations impugned the Department's integrity. They implicated senior colleagues of the investigators themselves. Departmental pride was at stake. Rather than face the facts, it was easier to look for rationalizations such as `the evidence did not add up to the conclusive proof of crime,' `everybody does

favors for political friends,' or `the Hamiltons are suffering from a persecution complex.'_ As the Bankruptcy Court observed, respondents' reaction was "to circle the wagons." In re Inslaw, Inc., Ch. 11 Case No. 85-00070, Adv. No. 86-0069, slip op. at 1038 (Bankr. D.D.C. June 12, 1987).

Briefly stated, these are the circumstances under which INSLAW seeks from this Court a writ of mandamus directing respondents to conduct a fair and thorough investigation into the facts underlying the allegations contained in its petition and the attachments thereto. The legal basis for this request is set forth in the remainder of this memorandum.

ARGUMENT

I

MANDAMUS IS THE APPROPRIATE REMEDY

United States district courts have original jurisdiction of any action in the nature of mandamus to compel officers or employees of the United States or any agency of the United States to perform a duty owed to a plaintiff. 28 U.S.C. § 1361 (1982). The remedy of mandamus is available if (1) plaintiff has a clear right to relief, (2) defendant has a clear duty to act, and (3) there is no other remedy available to plaintiff. Homewood Professional Care Center, Ltd. v. Heckler, 764 F.2d 1242, 1251 (7th Cir. 1985); Maier v. Orr, 754 F.2d 973, 983 (Fed. Cir.), reh'g denied, 758 F.2d 1578 (Fed. Cir. 1985); Ganem v. Heckler, 746 F.2d 844, 852 (D.C. Cir. 1984); Piledrivers' Local Union No. 2375 v. Smith, 695 F.2d 390, 392 (9th Cir. 1982); Carter v. Seamans, 411 F.2d 767, 776 (5th Cir. 1969), cert. denied, 397 U.S. 941 (1970). See also Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1980).

To justify a court order compelling an officer or agency of the executive branch to perform a duty, it must be clear that the non-performance of the duty cannot be defended as falling within the legitimate discretion of the officer or agency. Mandamus is the indicated remedy, therefore, where "[f]ederal officials are acting contrary to law, abusing their discretion and acting outside the limits of their permissible discretion . . . ." NAACP v. Levi, 418 F. Supp. 1109, 1117 (D.D.C. 1976). That was a

case in which plaintiffs alleged, as we allege, that the Department of Justice had abused its discretion by conducting an investigation that was "superficial, less than thorough and meaningless." Id. at 1113. The government's motion to dismiss the complaint was denied.

Respondents' failure in the present case to perform legally mandated duties provides at least as compelling a justification for judicial intervention as the instances of nonperformance typically redressed by mandamus. E.g., Roaring Springs Assocs. v. Andrus, 471 F. Supp. 522 (D. Or. 1978) (on petition of private landowners, Secretary of Interior ordered to remove free-roaming horses from landowner's property); Caswell v. Califano, 435 F. Supp. 127 (D. Me. 1977), aff'd, 583 F.2d 9 (1st Cir. 1978) (on petition of affected beneficiaries, Secretary of Health, Education, and Welfare ordered to end delays in scheduling administrative hearings on eligibility for disability benefits); McNutt v. Hills, 426 F. Supp. 990 (D.D.C. 1977) (upon proof of blind employee's claim, mandamus would be appropriate to compel Secretary of Housing and Urban Development to meet affirmative obligations to combat discrimination against mentally handicapped). In every case the controlling question is whether the official action or failure to act, as the case may be, is so lacking in any tenable justification as to be impossible to characterize as a defensible performance of duty.

Since performance of the duty to be fair and to enforce the criminal law is an executive branch function, the judiciary is

generally reluctant, and properly so, to grant relief to private litigants who directly challenge prosecutorial discretion. For a court to substitute its own judgment for that of the Department of Justice on the question of whether or not an individual should be prosecuted would self-evidently encroach upon the separation of powers provided for in Article II, Section 3 of the Constitution. Newman v. United States, 382 F.2d 479, 481 (D.C. Cir. 1967); United States v. Cox, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935 (1965). See Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 863 (D.C. Cir. 1981).

Drawing on these generalizations, respondents may argue that for this Court to order them to conduct a fair and impartial investigation will usurp their "prosecutorial discretion." There can be no such usurpation, however, where the failure to perform a prosecutorial duty is the consequence not of legitimate discretion, but of discrimination, conflict of interest, obstruction of justice, or sheer neglect. In those situations the court order -- far from usurping an executive function -- merely requires the function to be carried out. See NAACP v. Levi, 418 F. Supp. at 1116. As the Court of Appeals for this Circuit has observed, "the decisions of this court have never allowed the phrase 'prosecutorial discretion' to be treated as a magical incantation which automatically provides a shield for arbitrariness." Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 673 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1972). See Perkins v. Elg, 307

U.S. 325, 349-50 (1939).

The distinction between the executive branch's duty to prosecute and the judicial branch's power to enforce observance of that duty was sharply delineated in Nader v. Saxbe, 497 F.2d 676 (D.C. Cir. 1974). Plaintiffs there sought a writ of mandamus to compel the Attorney General of the United States and the United States Attorney for the District of Columbia to initiate criminal prosecutions against alleged violators of the Federal Corrupt Practices Act. Although finding that the plaintiffs lacked standing, the Court of Appeals took issue with the District Court's conclusion that prosecutorial decision-making is wholly immune from judicial review and pointed out that mandamus is the appropriate remedy where "no legitimate consideration informed the prosecutor's decision not to prosecute the individual in question." Id. at 679 n.18.

No legitimate consideration informed respondents' decision not to investigate INSLAW's allegations. Accordingly, a writ of mandamus is the appropriate means of compelling respondents to fulfill the duties and responsibilities incumbent upon them as a matter of law.

II

INSLAW HAS A CLEAR RIGHT TO RELIEF

INSLAW's civil claims against the Department of Justice rest on the same evidence that points to the existence of a criminal conspiracy to destroy INSLAW and take over its software. The Department has defended itself against INSLAW's claims with

extraordinary zeal and tenacity. It continues to do so without ever having conducted an investigation of INSLAW's allegations sufficient to enable it to make a fair assessment of the merits of those claims, and thus to evaluate the extent of its potential liability to INSLAW.

As the next section of this memorandum makes clear, the Department had -- and still has -- a duty to conduct such an investigation. Insofar as it is a duty compelled by the obligation to be fair in the conduct of civil litigation, it is a duty owed to petitioner. Petitioner has been harmed by the Department's failure to fulfill this duty. INSLAW therefore has a clear right to relief, and thus satisfies the first requirement of entitlement to mandamus. See cases cited supra at 8-9.

The Department's neglect of its duty of fairness has harmed and continues to harm INSLAW in three clearly demonstrable ways: (1) it has forced INSLAW to expend substantial amounts of money and other corporate resources litigating its civil claims against the Department; (2) it has caused INSLAW to lose important business opportunities by delaying the vindication of INSLAW's performance under its contract with the Department; and (3) it has forced INSLAW to devote a vast amount of time, money, and energy to investigative efforts which the Department itself should have conducted and to which the Department could have brought far more adequate investigative resources. Indeed, the present situation entails a right to relief at least as compelling as those deemed sufficient in other cases involving a government agency's respon-

sibility toward a plaintiff's access to information. Cf. Ganem v. Heckler, 746 F.2d at 852-54 (on petition of non-resident Iranian, Secretary of Health and Human Services ordered to determine content of Iranian law for purposes of awarding Social Security benefits); American Friends Serv. Comm. v. Webster, 485 F. Supp. 222, 227 (D.D.C. 1980), aff'd in part and rev'd in part, 720 F.2d 29 (D.C. Cir. 1983) (FBI enjoined from destroying documents that might be relevant to plaintiffs' claims).

INSLAW's right to relief is reinforced by the criteria normally applied to standing in general. A party has standing if it alleges "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751, reh'g denied, 468 U.S. 1250 (1984). The economic harm suffered by INSLAW is itself sufficient to satisfy this requirement, as it "is beyond cavil that the deprivation of one's property is a sufficient injury to satisfy the injury in fact requirement." Cardenas v. Smith, 733 F.2d 909, 913 (D.C. Cir. 1984).

III

RESPONDENTS HAVE A CLEAR DUTY TO ACT

Article II, Section 3 of the Constitution directs the President to "take care that the Laws be faithfully executed." Although the statutes creating the position of Attorney General and making him head of the Department of Justice (28 U.S.C. §§ 503, 509) do not spell out his responsibilities, it has been

authoritatively declared that the Attorney General is "the hand of the President in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offences [sic], be faithfully executed." Ponzi v. Fessenden, 258 U.S. 254, 262 (1922). See also United States v. Cox, 342 F.2d at 171. The Court in Ponzi traced the Attorney General's responsibility for the execution of laws to such venerable cases as Kern River Co. v. United States, 257 U.S. 147 (1921); In re Neagle, 135 U.S. 1 (1890); and United States v. San Jacinto Tin Co., 125 U.S. 273 (1888). This responsibility has been delegated to him by the President pursuant to the latter's "authority to commission all the officers of the United States, and, by and with the advice and consent of the Senate, to appoint the most important of them and to fill vacancies." In re Neagle, 135 U.S. at 63.

The judicial precedents thus supply formal support for the universal assumption that it is respondents' duty to enforce the criminal laws of the United States and to represent the United States in civil litigation. This clear duty to act fulfills the second requirement of petitioner's entitlement to mandamus.

A. Respondents' Duty to Conduct Civil Litigation Embraces a Duty to Be Fair

Respondent's duty to see to it that the laws are faithfully executed carries with it a special obligation toward maintaining public confidence in the fairness of the administration of justice. In the words of the Supreme Court:

> Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts."

Brady v. Maryland, 373 U.S. 83, 87 (1963). The quoted inscription is as true, of course, for civil litigation as for criminal proceedings: both belong to "the federal domain."

Courts have long looked to Department of Justice officials for exemplary conduct as agents of the government. See Owen v. City of Independence, 445 U.S. 622, 651, reh'g denied, 446 U.S. 993 (1980); Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), overruled, Katz v. United States, 389 U.S. 347 (1967). The public has a right to expect conscientious service from government counsel. Meza v. Washington State Dep't of Social & Health Servs., 683 F.2d 314, 315 (9th Cir. 1982) (district court held to abuse its discretion by excusing neglect of State Assistant Attorney General).

In the case of criminal proceedings, federal courts can enforce the duty to be fair by ordering a new trial. E.g., Berger v. United States, 295 U.S. 78, 88 (1935) (unfair cross-examination of witnesses and unfair argument); King v. United States, 372 F.2d 383, 396 (D.C. Cir. 1966) (unfair cross-examination); Griffin v. United States, 183 F.2d 990, 993 (D.C. Cir. 1950) (failure to disclose evidence useful to defense). See also Young v. United States ex rel. Vuitton, 481 U.S. 787 (1987);

Campbell v. Marshall, 769 F.2d 314 (6th Cir. 1985), cert. denied, 475 U.S. 1048 (1986). In civil proceedings, mandamus can effectively serve the same end. See cases cited supra at 8-9.

Respondents' duty of fairness in the conduct of a lawsuit is more exacting than that expected of an ordinary litigant. Indeed, observance of this special degree of responsibility is expressly commanded by the Department of Justice Standards of Conduct. All Department of Justice employees are directed to "[c]onduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them . . . ." Department of Justice Standards of Conduct, 28 C.F.R. § 45.735-2(a) (1988). Attorneys are also instructed to be guided in their conduct by the Code of Professional Responsibility of the American Bar Association. Id. § 45.735-1(b). The Code specifically speaks to the standard of fairness to be expected of government lawyers:

> A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

Code EC 7-14 (1989).

Respondents have "discretionary power relative to" the INSLAW litigation. Their responsibility to develop "a full and fair record" applies to the pretrial as well as to the trial stage of the litigation. Having failed to fulfill this responsibility, they are "continuing litigation that is obviously unfair." The Code of Professional Responsibility requires, therefore, that respondents make a serious effort to find out whether or not INSLAW's allegations are true, and this requirement is reinforced by the fact that respondents are in a far better position than INSLAW to do so. The unfairness that has resulted from the neglect of this responsibility is compounded by the continuing harm thereby imposed on INSLAW.

Given respondents' persistent refusal to take the action demanded by the duty of fairness, mandamus is the only practical means of redress.

B. Respondents' Duty to Enforce the Criminal Laws Embraces the Duty to Investigate

Referring to United States Attorneys, the Supreme Court has laid down standards that apply to all Federal prosecutors:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Berger v. United States, 295 U.S. at 88 (emphasis added). See also Young v. United States ex rel. Vuitton, 481 U.S. at 803; Marshall v. Jerrico, Inc., 446 U.S. 238, 249 (1980).

In order to see to it that "guilt shall not escape," respondents are obliged, whenever they initiate an investigation of wrongdoing, to pursue the evidence as far as may be necessary to make a proper determination as to the course of action thereby indicated. As this Court has said, a prosecutor "has an affirmative responsibility to investigate prudently suspected illegal activity when it is not adequately pursued by other agencies." NAACP v. Levi, 418 F. Supp. at 1115 (citing A.B.A. Standards Relating to the Administration of Criminal Justice, The Prosecution Function, Part III (1974)).

Of course, respondents' duty to enforce the criminal laws is not a duty owed to INSLAW in the same degree that they owe INSLAW a duty of fairness in defending the United States against INSLAW's claims. That is a consideration, however, that bears only on the question of INSLAW's standing to seek mandamus, not on the question of the appropriateness of mandamus as a means of compelling respondents to carry out their duty to enforce the criminal laws through a proper investigation of INSLAW's allegations. Given INSLAW's standing in this Court to seek relief from respondents' unfairness in the civil litigation, the issue of their failure to enforce the criminal laws is also before the Court. Cf. Nader, supra, cited at 11; Levi, supra, cited at 8-9. If, therefore, this Court finds that they have been derelict in

this duty, it can properly order them to carry it out.

Respondents' duty to pursue the evidence in the matter of INSLAW has three separate components. The first consists in their obligation to decide upon the appropriate course of action. The Bankruptcy Court for this District found that "the Department of Justice took, converted, stole, INSLAW's enhanced PROMIS by trickery, fraud, and deceit . . . ." Inslaw, Inc. v. United States, slip op. at 9 (decided Sept. 28, 1987). This Court has affirmed that finding. United States v. Inslaw, Inc., slip op. at 44. INSLAW has adduced additional evidence of criminal conduct on the part of Department officials. These facts thrust upon respondents a duty to put aside concerns of institutional self-interest and follow the evidence wherever it may lead. Until and unless they do that, they cannot properly determine what action is necessary.

The second component derives from respondents' possession of a unique array of investigatory powers and resources. Respondents can, and INSLAW cannot, authorize electronic surveillance, initiate undercover operations, compel immunized testimony, rely on unsympathetic informants and accomplice witnesses, and call upon a grand jury's investigative powers. A Senate subcommittee which looked into the INSLAW situation learned that there were a number of DOJ employees "who desired to speak to the Subcommittee, but who chose not to out of fear for their jobs." Senate Comm. on Gov'tal Affairs, 101st Cong., 1st Sess., Allegations Pertaining to the Dep't of Justice's Handling of a

Contract With INSLAW, Inc. 58 at 46 (Comm. Print 1989). Only the Attorney General can assure these employees that their testimony will not bring reprisal. Moreover, the Department has under its direction trained and experienced investigators who have not been compromised by previous involvement in the INSLAW case. Possession of these powers and resources creates responsibility for their prudent but vigorous use.

The third component is a consequence of the impairment of INSLAW's ability to find the facts for itself which resulted from a court order denying it access to subpoena power and discovery proceedings for the 20-month period during which respondents' appeal from the Bankruptcy Court judgment was pending. The fact that respondents deliberately sought this blocking device augments their affirmative responsibility.

IV

INSLAW HAS NO OTHER ADEQUATE REMEDY

INSLAW has pursued, unsuccessfully, all the available administrative means of inducing the Department of Justice to perform its duty to conduct a fair and thorough investigation. INSLAW requested that the Attorney General appoint an Independent Counsel pursuant to the Ethics in Government Act. Respondents denied this request on May 4, 1988. INSLAW later asked the Special Division of the United States Court of Appeals for this Circuit, which is responsible for appointing Independent Counsels, to review this denial, but the Special Division found lack of

jurisdiction. In re INSLAW, Inc., Div. No. 89-2 (D.C. Cir. Sept. 8, 1989). Taking it for granted that the Department would conduct a bona fide investigation into the matter, INSLAW came forward with relevant information. Some of this information was submitted to the Public Integrity Section by the Hamiltons in February, 1988, and additional information was given to the Attorney General in May, 1989. The Department has ignored the leads supplied by INSLAW.

After the Public Integrity Section concluded its "investigation," it declined prosecution and closed the matter on July 18, 1989. INSLAW's counsel wrote the Department on August 10, 1989 complaining that this investigation had not been conducted in a thorough and impartial manner. The Department refused to reopen the matter.

Where, as a result of the exhaustion of administrative remedies, mandamus has become the only remaining source of relief, it is the appropriate remedy. See Ganem v. Heckler, 746 F.2d at 852-53; City of New York v. Heckler, 578 F. Supp. 1109, 1119 (E.D.N.Y.), aff'd, 742 F.2d 729 (2d Cir. 1984), reh'g denied, 755 F.2d 31 (2d Cir.), cert. granted, 474 U.S. 815 (1985), aff'd sub nom. Bowen v. City of New York, 476 U.S. 467 (1986); Caswell v. Califano, 435 F. Supp. at 132.

INSLAW has exhausted all available administrative remedies. It has no remaining source of relief. INSLAW has therefore satisfied the third and final requirement of entitlement to mandamus. See cases cited supra at 8.

Conclusion

For all the foregoing reasons, this Court should issue a writ of mandamus compelling respondents to conduct a fair and thorough investigation of the matters alleged by INSLAW in accordance with the conditions proposed in petitioner's prayers for relief.

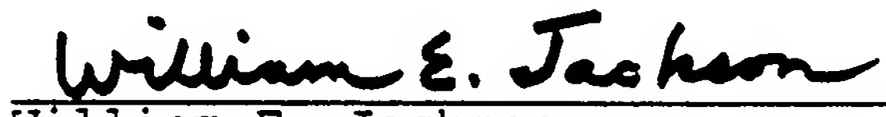
Dated: Washington, D.C.
December 20, 1989

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By: 

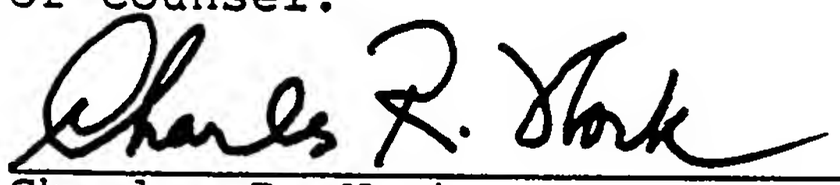
Elliot L. Richardson
D.C. Bar No.: 308710
1825 Eye Street, N.W.
Washington, D.C. 20006
(202) 835-7500



William E. Jackson
D.C. Bar No.: 110692
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Attorneys for Petitioner
INSLAW, Inc.

Of Counsel:



Charles R. Work
D.C. Bar No.: 61101
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006
(202) 887-8000

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INSLAW, INC., Petitioner v. DICK THORNBURGH, in his official capacity as Attorney General of the United States, and UNITED STATES DEPARTMENT OF JUSTICE, Respondents	)	No. 89-____

AFFIDAVIT OF WILLIAM A. HAMILTON

WILLIAM A. HAMILTON, being duly sworn, deposes and says:

1. I am President and Chairman of the Board of Directors of INSLAW, Inc. ("INSLAW"). I have held these positions since the inception of INSLAW's business operations in January of 1981. In my capacity as President and Chairman of the Board, I am responsible for overseeing, coordinating and directing INSLAW's bankruptcy proceedings, litigation strategy, and investigative efforts regarding INSLAW's dispute with the United States Department of Justice ("DOJ"). As the individual responsible for the above described efforts, I have knowledge of the detailed facts set forth below.

A. The Bankruptcy Court's Findings of Fact

2. The U.S. Bankruptcy Court for the District of Columbia heard evidence in two trials during the summer of 1987 concerning INSLAW's allegations that DOJ officials engaged in unlawful interference with INSLAW's efforts to reorganize under Chapter 11 of the U.S. Bankruptcy Code and unlawfully exercised control over INSLAW's proprietary software. The two trials together consumed more than three weeks of hearings. On January 25, 1988, the Court rendered its judgment in favor of INSLAW and announced Findings of Fact and Conclusions of Law. Among the Court's principal findings were that:

a. DOJ officials "took, converted, stole" 44 copies of INSLAW's proprietary PROMIS case management software "through trickery, fraud and deceit." In March 1982, INSLAW had entered into a three-year, $10 million contract with DOJ to introduce the earlier public domain version of the PROMIS software into the U.S. Attorneys' offices. Claiming that INSLAW had no title to a subsequent version of PROMIS that INSLAW had significantly improved through the incorporation of privately-financed enhancements, DOJ officials attempted to coerce INSLAW into turning the proprietary version of PROMIS over to DOJ, without any recognition of INSLAW's property rights, by threatening to suspend timely payments of INSLAW's invoices under the contract which then accounted for a large portion of INSLAW's corporate revenues. When this attempt at coercion failed, DOJ officials modified INSLAW's contract to provide for delivery of the proprietary version of PROMIS based on a fraudulent DOJ promise to

negotiate the payment to INSLAW of license fees if DOJ decided to use the proprietary version in the U.S. Attorneys' offices. DOJ's internal procurement counsel, William Snider, had insisted that DOJ modify the contract before taking delivery of the proprietary version of INSLAW's software.

b. Having driven INSLAW into Chapter 11, DOJ officials then immediately "sought unlawfully and without justification" to force INSLAW from there into Chapter 7, i.e., liquidation. In a sworn deposition taken in March 1987, Cornelius Blackshear, then a U.S. Bankruptcy Court Judge in the Southern District of New York, testified that in 1985, when he was U.S. Trustee in that district, Thomas Stanton, Director of DOJ's Executive Office for U.S. Trustees, used political pressure in an attempt to get Harry Jones, Blackshear's First Assistant, detailed to Washington to help force the liquidation of INSLAW. Although Blackshear recanted this testimony the following day in a sworn affidavit, the Court found that the original testimony was true.[1]

c. The PROMIS Project Manager was C. Madison Brewer, a former INSLAW employee. INSLAW's President, William Hamilton, had terminated Brewer's employment for cause several years

---

[1]Information corroborating the Court's finding is contained in subparagraph 3(j) below.

prior to his recruitment by DOJ; because of that, Brewer was motivated by an intense desire for revenge against INSLAW. Brewer's vindictiveness rubbed off on other DOJ officials, including particularly Peter Videnieks, the PROMIS Contracting Officer, and influenced their unlawful actions against INSLAW.

d. DOJ officials acted on a decision "consciously made at the highest level," to ignore the evidence of vindictiveness toward INSLAW on the part of DOJ officials, especially Brewer and Videnieks. Their harassment of INSLAW was permitted to continue unchecked because D. Lowell Jensen, who between 1981 and 1986 served successively as Assistant Attorney General in charge of the Criminal Division, Associate Attorney General, and Deputy Attorney General, was biased against INSLAW. As District Attorney of Alameda County in California in the 1970s, Jensen developed case management software which competed unsuccessfully against PROMIS in California. By the time Jensen came to DOJ in early 1981, he believed that DOJ had been wrong to promote the use of PROMIS by district attorneys' offices instead of his own case management software.

B. INSLAW's February 1988 Submission to the Public Integrity Section

3. After the Bankruptcy Court trials ended, my wife, Nancy Hamilton, and I looked back over everything that had happened since

DOJ awarded INSLAW the PROMIS contract. We concluded that the vengefulness of Brewer and the hostility of Jensen could explain the desire to harm and even to destroy INSLAW, but that it did not explain a series of attempts to acquire control over INSLAW's case management software so tenacious that they could be accounted for only on the basis of someone expecting to be in a position to make a lot of money from PROMIS. Once having perceived this, we were able to develop a coherent explanation of what had happened to INSLAW. We first sought, but did not obtain, an opportunity to present this explanation directly to the appropriate authorities in DOJ. We then submitted a written statement to the Public Integrity Section of the Criminal Division in February, 1988. The statement wove together the facts found by the Bankruptcy Court with other information, including that concerning the attempts to gain control over PROMIS. In the opinion of our counsel, the aggregate information thus combined was more than sufficiently specific and credible to warrant the appointment of an independent counsel. My wife and I sought through litigation counsel to meet with the Public Integrity Section prosecutor to convince her of this, but were denied an opportunity for such a meeting. The following is a condensation of the information which supplemented the Court's findings:

a. Edwin Meese and Jensen served together in the Alameda County District Attorney's office before Meese became Chief of Staff to Governor Ronald Reagan. By 1980, both the Senate Judiciary Committee and the Office of Management and Budget had recommended that DOJ establish "compatible, comprehensive case management systems among its litigating components." Through these sources as well as through Jensen, Meese would have become aware of this requirement. That he was also aware of PROMIS' capability was confirmed by a

luncheon speech on April 21, 1981 in Washington, D.C. to INSLAW's PROMIS users from throughout the U.S. in which Meese stated that he became familiar with INSLAW's work with PROMIS during the preceding several years while he was at the University of San Diego.

b. Dr. Earl Brian served as Secretary of Health with Meese in the Cabinet of Governor Reagan. By January 1981, when Meese became Counsellor to President Reagan, Brian was the controlling shareholder in Biotech Capital Corporation. The same month, Mrs. Meese bought stock in Biotech's first public offering. The money to pay for the stock was loaned to her by Edwin Thomas, another old California friend. At about that same time, Brian lent Thomas, who had just come to Washington as an aide to Mr. Meese, $100,000 for the purchase of a house. Mrs. Meese later bought stock in American Cytogenetics, another Brian company. During the first two years of the Reagan administration, Brian served as the Chairman of a Health Care Cost Reduction Task Force which reported to Meese.

c. Meese was nominated as U.S. Attorney General in January 1984. Soon after that, Jacob Stein became the Independent Counsel charged with investigating, inter alia, Meese's failure to disclose both Mrs. Meese's purchase of the Biotech stock and her receipt of the loan which financed it. Failing to find any connection between these transactions and Meese's official duties, Stein closed this

aspect of his investigation. Stein was unaware of the facts set forth in the following subparagraphs.

d. Brian was in a position to exploit his friendship with Meese. Brian controlled Biotech, and Biotech controlled Hadron, Inc. Hadron was in the business of integrating federal government computer-based information management systems. In May 1983, when the contract disputes began, the PROMIS system was already in use in the larger U.S. Attorneys' offices. It was then -- and is now -- the best available case management software. Brian could acquire PROMIS at little or no cost either by having DOJ procure a determination that the government, and not INSLAW, had title to the software; by having DOJ push INSLAW into liquidation, making the software available at a fire-sale price; or by arranging a friendly or hostile takeover of INSLAW. One after another, all three approaches were in fact pursued. The first two are described in the Bankruptcy Court's findings. The attempts at the third are detailed in subparagraphs f and i of this paragraph and subparagraphs d-f, and l-p of subparagraph 4. Brian's chance to use PROMIS would come whenever Meese and Jensen were able to launch the DOJ-wide Office Automation and Case Management Project for which, as noted above, the need had long been recognized.

e. In June 1983, a DOJ "whistleblower," whose identity INSLAW has not yet been able to

discover, warned the staff of Senator Max Baucus that, as soon as Meese became Attorney General, unidentified friends of Meese would be awarded a "massive sweetheart contract" to install the PROMIS software in every litigation office of DOJ.

f. On April 20, 1983, about two weeks after the contract modification referred to in paragraph 2(a) and less than a month before the first of the sham contract disputes, I received a phone call from Dominick Laiti, Chairman of Hadron, Inc. Laiti told me that Hadron needed the PROMIS software for federal government contracts that it expected to receive as a result of its political contacts at the highest level of the Reagan Administration. Laiti said that Hadron intended to become the leading vendor in the United States of software for law enforcement and courts and that this was why it had recently purchased SIMCON, Inc. (police software) and ACCUMENICS, Inc. (litigation support software) and why it was seeking to purchase INSLAW (court and prosecution software). Laiti identified Edwin Meese as Hadron's political contact at the highest level of the Reagan Administration, when I asked Laiti to whom he was referring. Laiti also told me that Mrs. Meese owned stock in his company. When I declined to meet with Laiti to discuss his proposition, Laiti said: "We have ways of making you sell."

g. In May 1983, DOJ officials initiated a series of major contract disputes with INSLAW. These

were sham disputes concocted as pretexts for withholding an increasingly larger amount of money each month of the contract. By February, 1985, DOJ had withheld nearly $2 million owed to INSLAW for services rendered under the contract, thus forcing INSLAW to seek Chapter 11 protection.

h. As soon as Meese became Attorney General, he and Jensen set in motion steps toward carrying out the DOJ-wide office automation and case management project. A request for proposals for this procurement, known as the Uniform Office Automation and Case Management Project and code-named "Project Eagle," was announced on May 25, 1986. Initial cost estimates were in the vicinity of $212 million; however, the options to expand the contract to encompass DOJ's quasi-autonomous bureaus could multiply this cost estimate by a factor of three or four. Although most of the capacity of the Project Eagle computers would be wasted without case management software, the request for proposals did not provide for the acquisition or development of any such software. DOJ acknowledged that it did not possess this software but nevertheless stated that it did not wish to have the winning bidder develop it. DOJ denied at first that certain provisions of the procurement, mandated through an Amendment to the Request for Proposals, dated May 25, 1986, implied an undisclosed plan to use PROMIS on Project Eagle computers but later admitted that the very purpose of those provisions was to make such use possible.

i. After the 1985 attempt to push INSLAW into liquidation failed, Systems and Computer Technology, Inc. (SCT), a Pennsylvania-based computer services company, launched a hostile takeover bid for INSLAW. My rejection of the SCT bid was supported by INSLAW's creditors.

j. In March 1987, Judge Blackshear told Judge Jane S. Solomon of the Civil Court of the City of New York that the pressure to force the liquidation of INSLAW referred to in paragraph 2(b) was part of a "conspiracy to get the INSLAW software." In the same period, Judge Blackshear made several statements consistent with his original testimony during the course of telephone conversations with Charles Docter, Brian O'Neill, and Michael Lightfoot, INSLAW's counsel. In the summer of 1988, Judge Blackshear told Anthony J. Pasciuto, the former Deputy Director of the Justice Department's Executive Office for U.S. Trustees, that he had recanted his sworn testimony about the DOJ conspiracy to liquidate INSLAW so that fewer people would be hurt.

C. Additional Evidence Assembled by INSLAW

4. Despite the credibility and specificity of the foregoing information, John Keeney, Acting Assistant Attorney General for the Criminal Division, informed INSLAW in a letter dated May 4, 1988 that the Division had completed its review of the Hamiltons' allegations and concluded that the appointment of an independent counsel was not warranted. The letter also stated that the Public Integrity Section would investigate certain of the allegations.

INSLAW has meanwhile conducted its own effort to corroborate them. Although this effort has been handicapped by the fact that we have been denied access to subpoena power and discovery proceedings pending the government's appeal from the Bankruptcy Court judgment, we have nevertheless been able to obtain the significant information which follows:

a. Donald Santarelli, a former Administrator of the Law Enforcement Assistance Administration and an attorney for INSLAW, met with Meese at the White House on May 4 or 5, 1981. Immediately following the meeting, Santarelli telephoned me to say that Meese had told him that Jensen, then heading the Criminal Division, had been chosen to spearhead a project to install the PROMIS software in all 94 U.S. Attorneys' offices, each of the DOJ legal divisions, and in quasi-autonomous DOJ bureaus such as the Bureau of Prisons, the Immigration and Naturalization Service, and the U.S. Marshal's Service.

b. An informant who does not wish to be named until assured of protection against reprisal told INSLAW with regard to the sham contract disputes that in 1984, Marilyn Jacobs, Jensen's secretary at DOJ, stated to the informant that "Jensen was the main person behind the INSLAW problem" and that "his style was to operate using his subordinates."

c. Frank Mallgrave, former Assistant Director of DOJ's Executive Office for U.S. Attorneys (EOUSA), told INSLAW that in May or June 1981, when Lawrence McWhorter was Deputy Director of

EOUSA, McWhorter confided to Mallgrave that INSLAW was likely to win the competition for the PROMIS procurement and that "we are going to get INSLAW." Soon thereafter DOJ ousted the two key officials in charge of DOJ's PROMIS program and replaced them with persons recruited from outside DOJ. Betty Thomas, the PROMIS DOJ Contracting Officer, was removed by threatening to charge her with "nonfeasance" unless she voluntarily stepped aside; she was replaced by Videnieks. Patricia Goodrich, the PROMIS Project Manager, was pushed aside to make room for Brewer.

d. John Schoolmeister, a former Customs Services Program Officer, told INSLAW that Videnieks, at the time he was hired as the PROMIS Contracting Officer, was the Contracting Officer for two contracts between the U.S. Customs Service and Hadron, Inc., and that Videnieks came to know the Hadron management during the course of that assignment.

e. Paul Wormeli, former Vice President of Simcon, Inc., a Hadron subsidiary, and Marilyn Titus, former secretary at both Simcon and Hadron, gave INSLAW information about the sequel to the approach by Dominick Laiti referred to in subparagraph 3(f) above. Both Wormeli and Titus said that Laiti, Wormeli, and Brian met in New York in September 1983 to raise capital for Hadron. Wormeli said that their aim was to raise $7 million for Hadron's expansion into criminal justice information systems. Titus, then secretary to Wormeli, added that the

purpose of the trip was to "raise capital to buy the court [i.e., PROMIS] software." Wormeli also stated that he and Laiti met during this September 1983 visit to New York with Mark Tessleman, then Vice President of Allen and Company, a Wall Street Investment Bank, to discuss raising the capital.

f. Jonathan Ben Cnaan, an account executive with 53rd Street Ventures, a New York City venture capital firm that then had a small equity investment in INSLAW, described a meeting in September 1983 at 53rd Street Ventures with a "businessman with ties at the highest level of the Reagan Administration" who was eager to obtain the PROMIS software for use in federal government contract work. The meeting took place several months after the contract disputes with DOJ had emerged, and the businessman assured 53rd Street Ventures that INSLAW would never be able to resolve them. According to Ben Cnaan, the businessman was annoyed that I had rebuffed an attempt earlier that year to buy INSLAW in order to obtain title to the PROMIS software.

g. In December 1984, shortly before INSLAW's Chapter 11 filing, Daniel Tessler, the Chairman of 53rd Street Ventures, came to INSLAW and tried to induce my wife and me to turn over to him the voting rights of our controlling interest in INSLAW common stock. Daniel Tessler told me that neither 53rd Street Ventures nor Hambro Venture Capital would attempt to help INSLAW raise capital and avoid

possible disintegration unless we turned over the voting rights of our stock to him by the end of the business day. Daniel Tessler is a relative of Alan Tessler, the senior partner in the New York City law firm of Shea and Gould responsible for Brian's and Hadron's mergers and acquisitions work. At a national venture capital meeting in Washington, D.C. in May 1988, Patricia Cloherty, Daniel Tessler's wife and former business partner, told Richard D'Amore, an officer of Hambro International Fund, that she "knew all about" Brian's role in the INSLAW matter.

h. In approximately June 1985, Edward Hurley, then a Hadron Vice President in charge of its criminal justice systems work, told Theresa Bousquin that he did not believe that INSLAW would be able to survive a Chapter 11 and that Hadron wanted to acquire INSLAW's "court software" to complement its law enforcement software. Hurley resigned from Hadron in August 1985, the month after the U.S. Bankruptcy Court issued a Confidentiality Order sealing INSLAW's proprietary and customer information from DOJ. The Confidentiality Order thwarted DOJ's covert efforts to liquidate INSLAW. In the fall of 1985, Hadron divested itself of the law enforcement software that Hurley had earlier that year cited as a key part of Hadron's ambitions in the criminal justice field.

i. A second informant who fears reprisal told INSLAW that James L. Byrnes, a Deputy Assistant

Attorney General in the Land and Natural Resources Division with close ties to Meese, spearheaded the award by DOJ in October 1987 to a Hadron subsidiary of a $40 million computer services contract for litigation support in that Division.

j. Jacob Stein reported that Meese's telephone logs were missing for certain periods in 1983. INSLAW later discovered that these periods coincided with the effort to force INSLAW to turn over the proprietary version of PROMIS, the eruption of the contract disputes, and the Brian and Laiti meetings in New York City.

k. Henry Darrington and Timothy Walker, both former Dickstein, Shapiro and Morin employees, told INSLAW that they participated in the shredding of about 40 boxes of Meese's documents acquired by the law firm in connection with its representation of Meese in the Stein investigation.

l. Michael Simmons, former Assistant Vice President of Systems and Computer Technology (SCT), told INSLAW that the hostile takeover bid referred to in paragraph 3(i) above was discussed in advance with DOJ officials. He said that DOJ officials met in late 1985 with representatives of SCT to encourage the takeover and that the officials strongly hinted that INSLAW's contract disputes would be settled quickly once I was ousted as President of INSLAW.

m. Very close to the time that SCT discussed its hostile takeover bid with DOJ officials, it also discussed the planned takeover with "Mr. Allen" of Allen and Company, according to former SCT employees Robert Radford and Norman Keyt. In approximately September 1985, Michael Emmi, SCT President, and Michael Simmons, flew on a private aircraft to the Berkshire Mountains for a meeting with "Mr. Allen" of the Wall Street investment bank of Allen and Company to discuss the plan for SCT's takeover of INSLAW. Herbert A. Allen, Jr., President of Allen and Company, has a home in the Williamstown, Massachusetts area of the Berkshires. Radford heard Emmi boast, at about the time of the meeting, that he had contacts through which he could manipulate INSLAW's contract disputes with DOJ. According to the Securities and Exchange Commission, Allen and Company subsequently invested about $5 million to buy about 7.8% of SCT. Richard Crooks, the Allen and Company trader who bought the SCT shares, reportedly told Sue Grimm, former SCT Director of Investor Relations, that Allen and Company bought the SCT stock on behalf of a third party whose identity Crooks was not free to disclose, and that Allen and Company had, in fact, made a written acquisition offer, on behalf of the third party, to the SCT Board of Directors, but that the offer had been declined. The Allen and Company disclosures to the Securities and Exchange Commission, do not, however, reveal that the Allen and Company purchases of the SCT stock were made on behalf of any third party.

n. According to Radford, he and other SCT employees were given scripts by SCT management to use in attempting to disparage INSLAW to its existing and prospective customers in state and local governments throughout the United States during 1986. Part of the script was to cast doubt on INSLAW's title to the PROMIS case management software, and, therefore, the need to pay INSLAW license fees.

o. In early 1986, Michael Searcy, then Senior Vice President of SCT, met with me in Washington, D.C., and offered to pay me and my wife the sum of $500,000 if we would support the sale of INSLAW by its creditors to SCT. According to Norman Keyt, SCT had authorized Searcy to pay us as much as $1,000,000, but decided, instead, to proceed with a hostile takeover when I did not demonstrate any interest in the SCT offer.

p. During the approximately year-long period of the SCT effort to acquire INSLAW, Brian's mergers and acquisition counsel, Shea and Gould, continued to bill time and expenses to the INSLAW bankruptcy case. INSLAW has a copy of a Shea and Gould invoice for services rendered in the INSLAW case between October 1, 1985 and September 25, 1986. Shea and Gould was not serving as counsel of record for any INSLAW creditor during this period. According to former SCT employees Harry Stege and Norman Keyt, and former SCT consultant Thomas Evans, there was a New York City law firm that did not represent SCT, but which worked behind the

scenes to assist SCT in the hostile takeover bid for INSLAW. According to Evans, there was a Shea and Gould file in the SCT Law Systems Division in Phoenix containing documents transmitted by FAX from SCT headquarters. According to Stege, the New York City law firm introduced Emmi to one or more members of INSLAW's Unsecured Creditors Committee so that Emmi could disparage INSLAW's ability to reorganize under its current management, and also obtain confidential INSLAW data for use in formulating the SCT takeover bid.

q. Lois Battistoni, a former DOJ Criminal Division employee, told INSLAW that an employee of the Criminal Division disclosed to her in 1988 that the company chosen to take over INSLAW's business with DOJ was connected to one of the top DOJ officials through a California relationship and that Hadron fit the bill because both Brian and Meese served together in Governor Reagan's administration in California.

r. Battistoni's informant also told her that between February and May 1989 DOJ was still considering the installation of PROMIS on the Project Eagle computers. In early May 1989, a decision not to do so was made "at the highest level" of DOJ. On June 20, 1989, however, DOJ announced plans to buy expensive new computers for each of the 42 largest U.S. Attorneys' offices so that they could continue to use PROMIS in those offices. This meant that 42 computers contracted for under Project

Eagle would be wasted. DOJ was "afraid to do otherwise" because the computers on which the U.S. Attorneys' offices had been operating PROMIS were fast becoming obsolete and there was no case management software, other than PROMIS, available for installation on the new Project Eagle computers.

s. Battistoni also learned from another employee of the Criminal Division in July 1989 that DOJ intended "to bury INSLAW," meaning cover up what it had done to INSLAW.

5. In late April 1988, Ronald LeGrand, then Chief Investigator of the Senate Judiciary Committee, telephoned me to request a full briefing on the disputes between INSLAW and DOJ. My wife and I subsequently briefed LeGrand at INSLAW on the morning of May 11. LeGrand telephoned me two days later with information that he said a trusted source had asked him to convey. LeGrand described the source as a senior career official in DOJ "with a title" whom LeGrand had known for 15 years and whose veracity LeGrand could attest to without reservation. Shortly after DOJ's public announcement on May 6, 1988 that DOJ would not seek the appointment of an independent counsel in the INSLAW matter and that it had cleared Meese of any wrongdoing, the source told LeGrand that "the INSLAW case is a lot dirtier for the Department of Justice than Watergate was, both in its breadth and in its depth." The source also said that the "Justice Department has been compromised on the INSLAW case at every level." On several occasions since then, LeGrand has confirmed what he told me, and on October 11, 1988, Elliot Richardson, counsel to INSLAW, sent Robin Ross, an assistant to Attorney General Dick Thornburgh, a memorandum summarizing the statements attributed by LeGrand to his source. In addition, the source made the following statements:

a. Jensen engineered INSLAW's problems right from the start and relied for this purpose principally upon three senior DOJ officials: Miles Matthews, Executive Officer of the Criminal Division; James Knapp, a non-career Deputy Assistant Attorney General in the Criminal Division; and James Johnston, Director of Contract Administration in the Justice Management Division. Miles Matthews stated in the presence of LeGrand's source that "Lowell [Jensen] wants to get INSLAW out of the way and give the business to friends."

b. The source told LeGrand that John Keeney and Mark Richards, each a career Deputy Assistant Attorney General in the Criminal Division, and Philip White, the recently retired Director of International Affairs for the Criminal Division, knew "all about" the Jensen malfeasance in the INSLAW matter. Although Richards and White were "pretty upset" about it, the source did not believe that either of them would disclose what they knew except in response to a subpoena and under oath. The source added that he did not think either Richards or White would commit perjury.

c. The source believes that documents relating to Project Eagle were shredded inside DOJ, but that INSLAW should nevertheless subpoena DOJ paperwork prepared by a Jensen subordinate relating to the purchase of large quantities of computer hardware for which the senior DOJ career staff could see no justification.

D. INSLAW's Allegations Were Not Seriously Investigated

6. The information summarized above is self-evidently material to INSLAW's allegations. It supports the inference that the effort to destroy INSLAW was motivated by the aim of acquiring PROMIS for Project Eagle. If the Public Integrity Section had done no more than match INSLAW's independent effort, it would have pursued the same leads that INSLAW pursued, identified the same individuals whom INSLAW interviewed, and obtained the same information. INSLAW has asked the individuals identified in the preceding paragraphs whether or not they have ever been asked about the INSLAW case by anyone representing the Department of Justice. Beginning on December 11, 1989, INSLAW attempted to recontact each of the approximately 30 witnesses mentioned in this Affidavit to see if any of them has ever been contacted about INSLAW by DOJ. As far as we could determine, only one has been approached. Two representatives of the Department of Justice interviewed Judge Jane Solomon. I am reliably informed, moreover, that the Department of Justice has not yet attempted to obtain the testimony of the informant whose statements to Ronald LeGrand are described in paragraph 5 above. Although my own detailed recollections of past events and conversations have frequently been corroborated by later-discovered documents or subsequent testimony, the Department of Justice has not interviewed me either about my wife's and my February 1988 written statement, or about what we have since learned.

7. Assuming that a full, thorough, and impartial investigation would have sought to obtain relevant documents, correspondence, notes, appointment calendars, and telephone logs from individuals and organizations involved with INSLAW, I and my representatives have taken steps to find out whether or not the Department of Justice has made any such effort. So far as we can determine, this has not been done. The DOJ has never sought documents from Allen and Company relative to the effort of Brian, Laiti and Wormeli to

raise capital for Hadron. Neither has DOJ sought documents from 53rd Street Ventures or its then parent organization, Alan Patricoff and Associates, relating to communications about INSLAW, with a businessman having ties to the highest level of the Reagan Administration. DOJ has not sought documents from Systems and Computer Technology (SCT) relating to meetings between representatives of SCT and officials of DOJ in connection with SCT's attempt to take over INSLAW. The same is true, so far as we can find out, with respect to documents bearing on the communications during the years 1981-1988 between Earl Brian or Dominick Laiti, and Meese, Videnieks, Brewer, Jensen, Thomas Stanton, Patrick R. Gallagher, John Oakes, and Raymond Vickery, Jr.; the efforts of Hadron, Brian or Laiti, to enlist the cooperation of 53rd Street Ventures, or other INSLAW shareholders in acquiring the PROMIS software; and the identity of the person on whose behalf Allen and Company made a multi-million dollar equity investment in SCT at the time when SCT was trying to take over INSLAW.

William A. Hamilton

DISTRICT OF COLUBMIA; ss:

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia this 22nd day of December 1989.

Deborah L. Branzell

Notary Public

DEBORAH L. BRANZELL, Notary Public
in and for the District of Columbia
My Commission Expires August 14, 1993

My Commission expire: _____

1. Exhibit A is a copy of Elliot Richardson's memorandum and letter of transmittal to Robin Ross, dated October 11, 1988.

2. Exhibit B is an INSLAW press release and accompanying "agency bid protest" alleging that the Justice Department's Land and Natural Resources Division was attempting, in early 1989, to use a Request for Proposals as a thinly disguised effort to steal INSLAW's PROMIS trade secrets by contracting with former INSLAW software engineers to clone INSLAW's PROMIS software for operation on Project EAGLE computers.

3. Exhibit C is a list of the 30 witnesses whose statements are summarized in the Writ of Mandamus lawsuit. The names of four of the 30 witnesses, who have expressed fear of reprisal from the Justice Department if their identities were to be disclosed, were omitted from the list. Current business telephone numbers are included for all but two of the 26 witnesses identified by name.

4. Danny Casolaro, in 12 months of investigation of the Justice Department theft of INSLAW's PROMIS software "through trickery, fraud and deceit," spoke to the Hamiltons at least every other day.

Mr. Casolaro told the Hamiltons that he had discovered a linkage between the malfeasance against INSLAW and certain other scandals of the 1980's; i.e., the Iran/Contra Affair, the alleged October Surprise in 1980, and the Bank of Credit and Commerce (BCCI) scandal.

According to Mr. Casolaro, a small group of former covert intelligence professionals, augmented by representatives of organized crime, have profited from participation in each of these scandals. According to Mr. Casolaro, these individuals included George Pender, Richard Helms, Dr. John P. Nichols, E. Howard Hunt, Earl W. Brian, Peter Videnieks and organized crime figures from Los Angeles, California.

Mr. Casolaro also told the Hamiltons that he was investigating claims from former senior Justice Department and FBI officials that the FBI implemented pirated copies of INSLAW's PROMIS computer software as part of its Field Office Information Management System (FOIMS) in late 1988, and that the FBI had provided perjurious testimony denying this fact in U.S. District Court in the INSLAW case (see Exhibit D).

INSLAW believes that any details of Danny's investigation should be presented to an Independent Counsel because of the obvious conflict of interest on the part of the Justice Department and the FBI.

Exhibit A

Exhibit A

MILBANK, TWEED, HADLEY & McCLOY

INTERNATIONAL SQUARE BUILDING
1825 EYE STREET, N.W.
WASHINGTON, D.C. 20006

(202) 835-7500
RAPICOM 230: 835-7586/7508
I. T. T. 440667

ELLIOT L. RICHARDSON
PARTNER

1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

NIPPON PRESS CENTER BUILDING
2-1 UCHISAIWAI-CHO 2-CHOME
CHIYODA-KU, TOKYO 100

ALEXANDRA HOUSE
16 CHATER ROAD
HONG KONG

1 COLLEGE HILL
LONDON EC4R 2RA, ENGLAND

1903/04 SHELL TOWER
50 RAFFLES PLACE
SINGAPORE 0104

515 SOUTH FIGUEROA STREET
LOS ANGELES, CA. 90071

October 11, 1988

The Honorable Robin Ross
Executive Assistant to the Attorney General
Department of Justice
Room 5111
10th & Constitution Avenue
Washington, D.C. 20530

Dear Mr. Ross:

Thank you for speaking with me today. Attached is an outline of the points we discussed.

With best wishes,

Sincerely,

Elliot L. Richardson

(A) When we spoke by telephone last week, you stated that there were two investigations under way on the INSLAW case, one by a member of Attorney General Thornburgh's staff and the other by the Office of Professional Responsibility. (OPR)

(B) Since our conversation, I have learned that OPR contacted William Hamilton, President of INSLAW last Wednesday and arranged to interview him on Tuesday, October 11, 1988.

(C) Mr. Hamilton intitially agreed to be interviewed, but informed the OPR attorney, Robert Lyon, that he lacks confidence in the ability of OPR to conduct an independent and credible inquiry into the INSLAW case based on the OPR report to Deputy Attorney General Arnold Burns in December, 1987 that attempted to dismiss the Findings of Fact of U.S. Bankruptcy Judge George Bason, Jr. concerning Thomas Stanton, Director of the Executive Office for United States Trustees. Judge Bason had found, at the conclusion of a week-long trial, and after evaluating contemporaneous written notes of DOJ officials obtained under subpoena and after reviewing the sworn testimony of a number of witnesses, that Mr. Stanton had applied political pressure on two United States Trustees to force the conversion of INSLAW from Chapter 11 to Chapter 7 (liquidation) "through unlawful means and without justification." The OPR report to Deputy Attorney General Burns not only dismissed Judge Bason's findings, but also recommended the firing of Anthony Pasciuto, then a deputy to Mr. Stanton, who had met with Mr. and Mrs. Hamilton on March 17, 1987 as a "whistleblower" about Mr. Stanton's unlawful conduct against INSLAW. The attached letter of March 17, 1988 from Mr. Pasciuto's attorney to Deputy Attorney General Arnold Burns (Attachment A) summarizes documentary and testimonial evidence at the trial which the OPR report to Mr. Burns, ignored and which contradicts the conclusions in the OPR report to Deputy Attorney General Burns.

(D) Not only did OPR ignore the Court record in reaching its conclusions that Mr. Pasciuto should be fired for his unauthorized communications to the Hamiltons, but OPR also

neglected to contact the Hamiltons for their account of the meeting with Mr. Pasciuto. The March 17, 1988 letter from Mr. Pasciuto's attorney to Deputy Attorney General Burns also summarized and enclosed copies of contemporaneous written notes from the Hamiltons and their attorneys that provide further corroboration for Judge Bason's Findings of Fact.

(E) Since Mr. Hamilton's telephone conversation with OPR Attorney Robert Lyon, he has had an opportunity to consult his litigation counsel, Charles Work, and me on this matter and we are concerned that OPR may itself be part of the problem in regard to the INSLAW case for the following reasons:

1. The performance of OPR in the Pasciuto whistleblower phase of the INSLAW case.

2. The fact that Mr. Robert Lyon appears to have been responsible for the OPR investigation of the INSLAW case for almost two years (see attached letters from Mr. Lyon to Joseph Godwin, Attachments B and C), and that despite the revelations at two highly publicized trials about DOJ malfeasance against INSLAW and extensive media reports alleging even more serious DOJ malfeasance against INSLAW, Mr. Lyon has waited for almost two years before even contacting INSLAW. Is it realistic to expect Mr. Lyon at this late date to issue a report that would implicitly raise questions about why it took OPR so long to recommend remedial action? Or is it more realistic to expect Mr. Lyon to try to defend his past inaction?

3. The award of a $20,000 Senior Executive Service bonus to Mr. Shaheen, who heads OPR, by Attorney General Meese in late 1987 while the OPR investigation into the INSLAW case was underway. INSLAW had, by the time of the SES bonus award made allegations that Attorney General Meese and Deputy Attorney General Arnold Burns may have caused INSLAW's original litigation counsel to fire the partner in charge of the INSLAW case, and to withdraw legal representation from INSLAW.

4. The repeated reports, attributed to specific current employees of DOJ, that DOJ employees are fearful of reprisals if they come forward and tell what they know about DOJ malfeasance against INSLAW.

5. A statement, attributed to a current employee of the Justice Management Division, that everybody in the Department has been lying to OPR in its investigation of the INSLAW case.

(F) INSLAW is anxious to cooperate with DOJ in its inquiry into the INSLAW matter and we believe that INSLAW and its litigation counsel could help such an inquiry by suggesting specific internal DOJ documents to be reviewed, and specific DOJ officials to be interviewed, based on information that INSLAW has obtained in its own investigation. The sine qua non for such an inquiry is, of course, confidence in the independence and impartiality of the investigation.

(H) In my letter to Attorney General Thornburgh of August 19, 1988, I referred to allegations that have been made by a senior career official of DOJ to the Chief Investigator of the Senate Judiciary Committee, Mr. Ron LeGrand, concerning the INSLAW case. Our own investigation has independently developed information, attributed to specific current employees of DOJ, that is highly consistent with the allegations made by the confidential informant to Mr. LeGrand, and that further underscores the importance of having an independent and impartial inquiry into the INSLAW matter. This independently developed information tends to corroborate the following allegations by the informant:

1. That D. Lowell Jensen engineered INSLAW's contract disputes with DOJ right from the start while he was serving as Assistant Attorney General for the Criminal Division.

2. That Mr. Jensen relied upon specific high level deputies in the Criminal Division to carry out his wrongful orders about INSLAW.

3. That a number of other senior officials and others in the Criminal Division know about this wrongful behavior and are upset about it.

4. That Mr. Jensen's objective was to get INSLAW out of the way so that the Department's case tracking business could be given to "friends."

5. That DOJ officials fear reprisals if they come forward and tell the truth about the Department's behavior in the INSLAW case.

ELR

October 10, 1988

Exhibit B

THE THIRTY WITNESSES REFERRED TO IN INSLAW'S WRIT OF MANDAMUS LAWSUIT FILED IN U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ON DECEMBER 26, 1989

1.	William A. Hamilton	(202) 828-8638 (O)
2.	Nancy B. Hamilton	(202) 828-8640 (O)
3.	New York City Judge Jane Solomon	
4.	Charles A. Docter, Esq.	(202) 628-6800 (O)
5.	Brian J. O'Neill, Esq.	(213) 451-5700 (O)
6.	Michael Lightfoot, Esq.	(213) 622-4750 (O)
7.	Anthony J. Pasciuto	(518) 457-6137
8.	Donald Santarelli, Esq.	(202) 466-6800
9.	*	
10.	Frank Mallgrave	(202) 586-8077 (O)
11.	John Schoolmeister	(703) 978-3045 (H)
12.	Paul Wormeli	(703) 689-0001 (O)
13.	Marilyn Titus	(301) 340-2814 (H)
14.	Jonathan Ben Cnaan	(212) 832-2230
15.	Richard D'Amore	(617) 523-7767 (O)
16.	Theresa Bousquin	(202) 828-8624 (O)
17.	Charles Trombetta	(301) 948-1873 (H)
18.	Henry Darrington	(318) 387-9261
19.	Timothy Walker	
20.	Michael Simmons	(312) 726-1167
	(Last known business number, which was for Oracle Systems, Chicago)	
21.	Robert Radford	(408) 646-4210 (O)
22.	Norman Keyt	(602) 931-9735 (O)
23.	Sue Grimm	(215) 363-5300 (O)
24.	Harry Stege	(918) 250-1424 (H)
25.	Thomas Evans	(517) 373-2855 (O)
26.	Lois Battistoni	(703) 491-6151 (O)
27.	*	
28.	*	
29.	Ronald LeGrand	(201) 682-6930 (O)
30.	*	

* - The four persons whose names are asterized were not identified by name in the Petition for Mandamus because they were still employed in the Department of Justice (DOJ) in December, 1989, when INSLAW filed its lawsuit.

Exhibit C

Exhibit C

INSLAW, Inc.

1125 15th St., N.W. Suite 300 Washington, D.C. 20005
(202) 828-8600 FAX (202) 659-0755

William A. Hamilton, President

April 23, 1990

PRESS RELEASEPRESS RELEASE***PRESS RELEASE***

Office: (202) 828-8600
Home: (301) 299-2870

INSLAW today filed a bid protest at the U.S. Department of Justice challenging the legality and propriety of a pending procurement for case management software. The procurement in question is Request for Proposals (RFP) No. JPLDN-90-R-0020, issued by the Justice Department on January 30, 1990 for new case management software to replace INSLAW's proprietary PROMIS case management software in the Justice Department's Land and Natural Resources Division.

The INSLAW bid protest charges that the pending procurement is a thinly disguised effort by the Justice Department to convert the PROMIS software to a new format in an effort to escape its obligation to purchase licenses from INSLAW. INSLAW further charges that this thinly disguised conversion plan is a violation of the permanent injunction issued by the U.S. Bankruptcy Court in January 1988 and upheld on appeal by the U.S. District Court for the District of Columbia. That injunction prohibits the Justice Department from expanding the use of PROMIS and from converting PROMIS for operation on other platforms.

INSLAW characterizes the pending procurement as "an outgrowth of a continuing bias against INSLAW which has been fueled by a lack of regard for INSLAW's legitimate proprietary rights in case management software now installed in the Department of Justice." According to the INSLAW protest, Justice Department conduct in the pending procurement raises "the disturbing possibility that the DOJ's purpose is not to develop PROMIS-like software, but to steal it."

The Justice procurement (1) seeks a vendor that has recent and extensive experience working with the PROMIS software; (2) to develop a new case management software system that contains all of the functions and features of PROMIS; (3) that will replace PROMIS; and (4) for which the Government will own exclusive title.

The Justice procurement (5) fails to provide a detailed design specification for the new case management software but (6) requires that the vendor bid the development on a firm fixed price basis and (7) complete the development and installation within twelve months of contract award.

In a written response to a bidder's question, published by Justice to all bidders, Justice alluded to the real design specification for the new software: "The Land Division has concluded that PROMIS experience is one of the most critical factors in developing the new system."

Without such an illicit conversion of PROMIS, the amount of time required for a vendor to develop a new case management software system would be about three years, according to an August 25, 1989 letter from the Justice Department to the General Services Administration. In that letter, Justice acknowledged that the permanent injunction would prevent Justice from converting INSLAW's PROMIS software.

In preparation for the procurement, Justice commissioned a market survey by Planning Research Corporation to assess the availability of existing case management software, either within Justice itself or in the commercial marketplace, to satisfy the Land Division requirement. This market research study failed to acknowledge the existence of the PROMIS software or of INSLAW, Inc. in reaching its conclusion that no software existed that could satisfy the Land Division requirement. The omission of PROMIS is remarkable in light of the fact that it is the most widely used case management software product in the Justice Department, and that the functions and features mandated for the new case management software match the current functions and features in PROMIS.

INSLAW President William A. Hamilton issued the following statement: "This pending procurement exposes the hypocrisy of the Justice Department's request to the U.S. Court of Appeals for appointment of a neutral mediator to resolve the disputes between INSLAW and the Justice Department. What is needed instead of a neutral mediator is an honest cop."

INSLAW has pending before Senior U.S District Judge William B. Bryant, Jr. a Petition For A Writ Of Mandamus to compel Attorney General Dick Thornburgh and the U.S Department of Justice to conduct a fair and thorough investigation of the malfeasance against INSLAW already found by the U.S. Bankruptcy Court and affirmed on appeal by Senior Judge Bryant. According to Mr. Hamilton, "the failure of the Justice Department to investigate and discipline the officials who committed the malfeasance against INSLAW, when combined with the transparently fraudulent nature of the current procurement, underscores the urgency of court intervention to correct the obvious breakdown in law and order in the U.S. Department of Justice."

COHEN & WHITE
SUITE 504
1055 THOMAS JEFFERSON STREET, N. W.
WASHINGTON, D. C. 20007
202-342-2550
FACSIMILE: 202-342-6147

April 23, 1989

Carol Rothgeb
Contracting Officer
U.S. Department of Justice
Procurement Service
Procurement Services Staff
601 D Street, N.W., Room 7100
Washington, D.C. 20530

Re: Protest of INSLAW Under RFP No. JPLDN-90-R-0020

Dear Ms. Rothgeb

INSLAW, Inc. hereby protests the award of any contract under the above-captioned RFP for the development of a comprehensive case management system for the Land and Natural Resources Division of the Department of Justice. The grounds of this protest are that the RFP unreasonably excludes off-the-shelf, commercial packages from consideration. In addition, the RFP is blatantly wired so as to virtually guarantee the selection of Software Development and Services Company (SDSC), which is run by William Garbee, a former INSLAW software executive. The RFP also contains misleading and erroneous information regarding the Department of Justice's ownership of software. The RFP is fatally flawed because of improper procurement planning. Finally, the RFP violates a court injunction which prohibits the conversion of PROMIS to other platforms. This RFP is a conversion contract masquerading as a development effort.

INSLAW requests the Department of Justice to cancel this RFP, and prepare a new solicitation which would permit INSLAW to propose its off-the-shelf software. In addition, the RFP should be structured so as not to violate the bankruptcy court injunction which prohibits precisely the activity that the Department is now undertaking.

The current procurement is an outgrowth of a continuing bias against INSLAW which has been fueled by a lack of regard for INSLAW's legitimate proprietary rights in case management software now installed at the Department of Justice. INSLAW is concerned that versions of this software are proliferating throughout the Justice Department with little or no management controls. These practices cannot go unchallenged. We request the Department of Justice to limit the damage to INSLAW by identifying the systems involved and putting controls on the dissemination of PROMIS-based software so that continued proliferation will not occur.

I. STATEMENT OF FACTS

On January 30, 1990, the Department of Justice issued a request for proposals to develop a comprehensive case management system for the Land and Natural Resources Division of the Department of Justice. As extended by Amendment 4, the due date for proposals is April 24, 1990. The purpose of the procurement is to obtain

> ...the services of an outside contractor to develop a comprehensive case management system for the Land and Natural Resources Division (Lands). For purposes of this project, case management refers to case tracking,

> attorney and paralegal timekeeping, debt and expert witness tracking, files management, FOIA/Privacy Act tracking, and case planning. The proposed systems will replace several automated and manual systems currently in use in the Division...."
>
> RFP at C-2.

The RFP further requires completion of all system development and implementation within one year of the date of contract award. Id. at B-1. Although the RFP does not contain detailed design specifications for the desired software, it did contain a number of functional and design requirements. As explained in more detail below, these requirements precisely match the capabilities of PROMIS, a proprietary case management product developed by INSLAW and installed at the Land and Natural Resources Division. Indeed, the RFP states on page C-13, that the Land Docket Tracking System, which is implemented in PROMIS, is "the principal case management system in the Division..." And page C-56 of the RFP stipulates that the new system developed in this procurement "...must provide the same functionality as the existing systems, as well as the items enumerated above, and more."

The version of PROMIS which is now installed at the Lands Division is a hierarchical data base. However, INSLAW recently completed development and testing of a new version of PROMIS which operates under the IBM relational data base management system, DB2. We will refer to this version of PROMIS as PROMIS/DB2. INSLAW is currently shipping PROMIS/DB2 to commercial customers.

DB2 is one of the two data base environments which the Department of Justice specifies for the RFP's case management development. The DOJ RFP contemplates that development of the case management system will occur in conjunction with a fourth generation relational data base management system. The RFP notes that the Justice Department Data Center will be purchasing DB2 or ORACLE in the near future, and encourages vendors to use one of these packages in its development effort. Although the RFP permits vendors to propose other data base management systems, it states that, "A vendor which submits an offer for both the alternative RDBMS and labor should bear in mind that the Lands Division has the option of developing a system on DB2 or ORACLE at no cost to the Lands Division." RFP at C-58b. Thus, the RFP clearly encourages use of DB2 and ORACLE in software development. See also Question and Answer 71. And INSLAW is able to deliver <u>now</u> a version of PROMIS which runs under one of the data base management systems that the Department has specified.

I. THE RFP IS UNREASONABLY RESTRICTIVE BECAUSE IT PRECLUDES INSLAW FROM BIDDING ITS OFF-THE-SHELF PROMIS DB/2 SOFTWARE.

The DOJ RFP makes it clear that the current features of PROMIS must be available in the system developed under the RFP. The RFP states on page C-56, "...the new system must provide the same functionality as the existing systems, as well as the items enumerated above, and more." Although the Department has claimed that it is not planning to

reimplement PROMIS in a relational structure, the RFP's specifications show that this is precisely what the Department has decided to do. Cf. Question and Answer 72. We have attached a chart to this protest which matches the RFP's specifications, and the capabilities of PROMIS/DB2. See Exhibit 1. With one, minor exception, this software meets all of the specifications of the RFP. Indeed, the current, hierarchical version of PROMIS meets all of the RFP's case management, file tracking and time tracking requirements. The one required feature which PROMIS currently lacks can be completed in less than 30 days.

There is simply no reason for the Department of Justice to spend money developing software which already exists. This is not a RFP which requires a vendor to add extensive capabilities to a specified case management system. Virtually all of the capabilities which the Department requires are presently available in PROMIS/DB2. Instead of waiting a year or more to complete a development effort, the Department should either conduct a competitive procurement for PROMIS/DB2 or equivalent software, or at the least allow INSLAW to propose its off-the-shelf PROMIS/DB2 package as an alternative to a development project.

As presently structured, the RFP completely prohibits INSLAW from proposing PROMIS/DB2 in DOJ's procurement. The RFP's questions and answers state categorically that the Department will not "give serious consideration to using an existing case management software that could be easily modified to meet stated requirements...." Question and Answer 61.

Off-the-shelf software is also precluded by provisions which require the vendor to give the Department title to software delivered under the contract. The "custom software, documentation, and other original products produced and provided to the Lands Division" under the RFP "shall be the sole and exclusive property of the U.S. Government....." RFP at H-8-H-9. Under Clause E-4, "Responsibility for Supplies," the RFP specifies that, "Title to supplies furnished under this contract shall pass to the Government upon formal acceptance...." The RFP also does not contain standard FAR clauses which permit vendors to supply software with restricted rights.

In addition, the RFP does not contain any provisions which would permit the Department to evaluate a solution based on off-the-shelf software. The cost evaluation is based on the offeror's fixed price quotes for development work. See RFP at B-1. There is no provision for proposing software licenses in lieu of this work. And even if there were, the RFP does not contain the minimum information required to prepare such a proposal, such as the number of licenses evaluated, the range of acceptable terms for the license, and the locations for licensed software.

Similarly, the RFP's technical evaluation does not encompass proposals of off-the-shelf software. A major portion of the technical evaluation will assess the offeror's technical approach to the RFP's tasks. RFP at M-12-M-2. Those tasks are defined as steps in software development, such as preparation of a detailed design document, development of a pilot

system and system development and implementation. Id. at C-60-62. An offeror is required to address these development steps even if he could bypass them entirely by proposing off-the-shelf software. The structure of the RFP underscores the Department's refusal in the questions and answers to consider any proposals of existing case management systems.

The Department's refusal to evaluate existing case management systems is arbitrary and irrational. This restriction violates the agency's obligations to maximize "full and open competition", 41 U.S.C. § 253a(a); FAR 10.002; to set forth requirements "in the least restrictive terms possible," FIRMR 201-11.001(b); and develop specifications "in such a manner as is necessary to maximize, and not limit, competition." FIRMR 201-30-013-1.

Moreover, DOJ's exclusion of commercial systems flies in the face of the requirement that agencies seek out and utilize commercial products when such products can sufficiently meet agency needs. FAR 11.002. The General Services Board of Contract Appeals ("GSBCA") has confirmed that:

> There is clearly a preference for such products and a requirement that the Government make reasonable efforts to provide for the acquisition of commercial products when they adequately satisfy the Government's needs.

Julie Research Laboratories, Inc., GSBCA 8919-P, June 9, 1987, 87-2 BCA ¶ 19,919 at 100,790.

The law is unequivocal regarding all competition restrictions in government procurements. An agency may not employ restrictive

requirements unless such restrictions "reflect the agency's actual minimum needs," and are "entirely necessary." International Systems Marketing, Inc., GSBCA 7948-P, 85-3 BCA ¶ 189,196, at 91,355; 41 U.S.C. § 253a(a)(2); FAR 10.002, 10.004. Where agencies have not been able to provide a clear showing that restrictive elements in their solicitations were required to meet agency needs, the GSBCA and the GAO have not hesitated to find such restrictions illegal. See Insyst Corp., GSBCA 10032-P, June 29, 1989, 89-3 BCA ¶ 22,050 ("all or none" requirement in RFP for computer software, hardware and maintenance was not adequately justified by agency and thus unduly restrictive.); PacifiCorp Capital, Inc., GSBCA 9733-P, December 7, 1988, 89-1 BCA ¶ 21,378 (single award for six computer configurations and penalty for non-manufacturer maintenance found unnecessary for agency's minimum needs and therefore unlawful); Motorola Computer Systems, Inc., GSBCA 8596-P, September 17, 1986, 86-3 BCA ¶ 19,309 (requirement for key disk system to display field number on status line as opposed to elsewhere on the screen found irrelevant to government's needs and overly restrictive); Data-Team, Inc., B-233676, April 5, 1989, 89-1 CPD ¶ 355 (agency failed to show restriction of copier machine procurement to dry-toner only machines was necessary for agency's needs).

DOJ's exclusion of currently available, commercially-owned case management software bears no relation to its minimum needs. DOJ's functional needs, as expressed in the RFP, can all be met by INSLAW's software (including use of a specified relational data base management

system) without the delay and expense of development. PROMIS not only can perform the requirements stated in the solicitation, but offers specific features and functionality that DOJ apparently considered in developing its stated requirements.

Notwithstanding the suitability of PROMIS for performing the agency's needs, the RFP, as now written, excludes INSLAW from offering its PROMIS product as a solution. This procurement's unjustified exclusion of commercially-owned systems is not unlike procurements where leasing proposals have been found to be unjustifiably excluded from competition. In Peninsula Telephone and Telegraph Co., B-192171, March 14, 1979, 79-1 CPD ¶ 176, GAO rejected an RFP that solicited only offers to sell, as opposed to offers to lease, a Naval communications system. In that case, GAO found that because the Navy could provide no reason related to its operational needs for buying a system as opposed to leasing a system, its purchase-only limitation was unduly restrictive. Id. at 2.

In this case, DOJ's minimum needs are not development and ownership of case management software. Rather, DOJ simply needs case management software to perform the functions indicated in the solicitation - - functions INSLAW's product can fully perform.

II. TO THE EXTENT THE RFP'S REQUIREMENT REGARDING 30-DAY OPERATIONAL ALTERNATIVE SOFTWARE CAN BE APPLIED TO COMMERCIAL CASE MANAGEMENT PRODUCTS, IT IS UNREASONABLY RESTRICTIVE.

As discussed above, this RFP clearly contemplates the design and development of case management software and excludes proposals to provide commercially-owned systems. The solicitation contains a provision, however, which is ambiguous at best and unduly restrictive under at least one interpretation.

With Amendment No. P004, the solicitation was modified to allow offerors to propose "an alternative relational database management product". This modification includes, in relevant part, the following statements:

> ...the government will consider an alternative relational database management product, provided that such a system will operate under MVS/XA, can be developed under CICS, and meets the other requirements set forth in this solicitation. Companies may propose an alternative software product contingent upon the use of DB2 or Oracle as an operational tool, or the alternative software may operate independently of DB2 and Oracle. <u>However, the alternative package must have been operational at a customer site(s) at least 30 days before the close of this solicitation</u>.

RFP, at C-58a, Amendment No. P004, (emphasis added).

The 30-day operational requirement in Amendment P004 appears to apply to any alternative relational database management product offered. However, to the extent that the 30-day requirement is interpreted as applying to a commercially-owned case management system that operates

under one of the specified database management products (i.e. DB2 or Oracle), it is an unreasonable and unnecessary restriction.

It is impossible to reconcile DOJ's willingness to develop case management software over a one year period with a requirement that any commercially-owned software operate under DB2 or Oracle operate at a customer site prior to submission of proposals. This requirement, if applicable, bears no relation to any agency needs and is therefore unduly restrictive. See Memorex Corp., GSBCA 7927-P, July 9, 1985, 85-3 BCA ¶ 18,289 (reliability standard in a solicitation for disk drives was not a legitimate attempt to meet the agency's minimum needs); Daniel H. Wagner, Associates, Inc., B-220633, February 18, 1986, 86-1 CPD ¶ 166 (requirements unduly restrictive when the types and durations of experience required of the contractor's personnel were found to be unnecessary in order to satisfy the government's needs.)

III. THE RFP IS WIRED FOR SOFTWARE DEVELOPMENT AND SERVICES CORPORATION.

Although the RFP specifically precludes INSLAW from proposing PROMIS, it requires offerors to demonstrate extensive amounts of PROMIS experience in order to win DOJ's procurement. These requirements have already raised concerns in the vendor community. Question and Answer 73 reflect the scope of the RFP's restrictions:

> Q73. Regarding the required Corporate Qualifications, p.C-67, why does the Contractor need to have "at least five years' experience and possess a working knowledge of PROMIS,

SAS and Easytrieve software packages, VM/CMS and MVS/XA operating systems, IBM products (such as CICS), the Wang VS system structure, and the Data General MV AOS-VS operating environment." The Contractor may need some experience in these areas, but five years seems excessive and overly restrictive. Also, why does the contractor need experience in PROMIS? PROMIS is written in COBOL. (p.C-13) Why would experience in COBOL not suffice? It would be more appropriate to require five years experience in the DBMS that will be used for implementing the new system.

A73. Corporate qualifications were identified after a careful review of the current hardware, software, and operating environments for each of our systems. It was necessary in this instance to require a substantial amount of experience due to the disparate nature of the current systems and the knowledge required to work on them. Please note, however, that, most of the personnel qualifications do not mandate this type of experience. (Emphasis added).

The last sentence of the Department's non-answer contains a serious error. In fact, PROMIS experience is required for virtually all of the positions specified in the RFP. Thus, the RFP requires the contractor to have "at least five years' experience and possess a working knowledge of PROMIS." RFP at C-67.[1] The personnel qualifications for the Project

---

[1]It is true that the RFP also states, in this section as in all of the personnel qualification sections quoted below that, "(Demonstrated equal experience is acceptable provided that such a system is a hierarchical database and that companies provide system and user documentation for Lands Division review. In addition, the company must describe in writing how such a system is comparable to PROMIS in both structure and functionality.)" See RFP at C-67-67a; See also id. at C-69, C-71, C-73, C-75. Thus, in order to justify evaluation of his alternative experience, the vendor must discuss PROMIS' structure and functionality. This basically requires PROMIS experience for the purpose of demonstrating that the vendor need not have PROMIS experience. It is also problematical as to whether a vendor could provide alternative system and user documentation for review since the circulation of such documentation is normally restricted by license. Moreover, the Department has not provided any guidance as to what software will be considered comparable to PROMIS. A vendor which does not have PROMIS experience is taking a considerable risk that the Department will consider his

Manager/Technical Analyst define as "highly desirable" "two years' experience each with PROMIS software...." RFP at C-69. The mandatory experience of the Senior Technical Systems Engineer includes, "Three years experience each with PROMIS software...." Id. at C-71. "Highly Desirable" experience for the Senior Systems Analyst includes, "Three years' experience with PROMIS...." Id. at C-73. The same level of PROMIS experience is also "highly desirable" for the Senior Programmer. In fact, the only personnel levels for which PROMIS experience is not "mandatory" or "highly desirable" are the Technical Writer and the Word Processing Specialist. As a result, it is almost inconceivable that a vendor could obtain a high technical score without extensive PROMIS experience. Such experience is heavily evaluated under the Personnel Qualifications and Corporate Experience, which notes that "Special emphasis should be given to the offeror's current (within past 3 years) experience in PROMIS, SAS, and Easytrieve....." RFP at M-2. PROMIS experience plays a significant role in technical evaluation criteria which account for 80 out of the 100 possible technical points.

But PROMIS experience would be required to compete in this procurement even if the RFP never mentioned the word "PROMIS." PROMIS experience is essential simply to bid the job. As stated above, the

---

alternative experience comparable --assuming, of course, that a vendor without PROMIS experience is able to "describe in writing" how alternative software matches PROMIS' "structure and functionality." The Department has not provided any salient characteristics, which would be required, for example, in a brand name or equal procurement, for an objective evaluation of comparability. For all practical purposes, this RFP is limited to vendors with the specified PROMIS experience.

RFP requires offerors to develop a case management system containing all the current functionality of PROMIS on a fixed price basis. Moreover, the development schedule requires an offeror to complete the development work within a year. The RFP does not contain sufficient design specifications which would permit a vendor to accurately gauge the complexity of this effort. Indeed, one vendor has already asked:

> ...Why was the System Design not identified as Phase 1 and the vendor given an opportunity to submit a fixed price proposal for this? It would be very difficult to estimate the hours and cost to develop a case management system without the System Design document, and it would seem that the Government's decision to have the same contractor do both the design and the implementation does not have the kinds of controls that Government contracts usually have. (Emphasis added).
>
> RFP, Question 67. (Emphasis added). See also Question and Answer 39.

The Department of Justice flatly rejected this suggestion. And this rejection leaves vendors with a major risk--unless they have a detailed knowledge of the PROMIS software which now runs at Justice. That version of PROMIS was developed over a period of not one but nine years. PROMIS includes hundreds of thousands of lines of code. The cost to INSLAW of development exceeds $10,000,000. An offeror who proposed, on a fixed price basis, to provide "the same functionality as the existing systems....and more" without a detailed knowledge as to how those systems are programmed would be courting disaster.

Thus, PROMIS experience is a clear prerequisite to bidding this RFP. But the RFP restricted the range of acceptable experience further by labelling as "highly desirable" experience with or knowledge of "Justice Data Center operations." See RFP at C-70, C-72, C-73a, and C-75a. This "highly desirable" criterion applies to the Project Manager/Technical Analyst, the Senior Systems Technical Engineer, the Senior Systems Analyst, and the Senior Programmer. In other words, only the Technical Writer and the Word Processing Specialist will be evaluated without regard to their experience with the Justice Data Center.

These experience requirements, and the practical constraints imposed by the requirement to bid the job on a fixed price basis, essentially limit the number of firms which can compete for the procurement to one. INSLAW is unable to compete because the Department refuses to evaluate off-the-shelf software, and requires title to any software product proposed. As the sole, legitimate source of the PROMIS software now installed at the Lands Division, INSLAW is uniquely familiar with the capabilities of third parties to develop PROMIS-like applications. In INSLAW's opinion, the RFP's experience requirements--both explicit and implicit--can only be satisfied by Software Development and Services Corporation (SDSC).

SDSC is headed by William T. Garbee, Jr. who served as INSLAW's Vice President for Software. He resigned from INSLAW in the first quarter of 1985. INSLAW believes that Mr. Garbee has recruited at least four former INSLAW employees to work with him at SDSC.

Mr. Garbee has been performing at least two PROMIS-related contracts for the Land and Natural Resources Division. In 1987, SDSC received a subcontract from Acumenics to develop a prototype for a new case management system. Earlier, in November 1986, the Land and Natural Resources Division awarded a contract to SDSC for the support and enhancement of PROMIS. The contracting officer who awarded the contract to SDSC in competition with INSLAW was Peter Videnieks. In September, 1987, the US Bankruptcy Court permanently enjoined Videnieks from any further official involvement with INSLAW because of bias against INSLAW and malice.

Thus, Mr. Garbee in particular, and SDSC in general, possess extensive PROMIS experience, as well as experience with the Justice Data Center which is required for a successful proposal. INSLAW is not aware of any other source, except itself, which possesses the requisite experience. The DOJ RFP is clearly a sole source procurement masquerading as a competitive acquisition.

The scope of DOJ's restrictions exceed any reasonable requirement. There is no need to structure the procurement so that any development contractor must assume inordinate risk in order to compete for this procurement.[2] If the Department of Justice developed an adequate

---

[2]Indeed, the effort required to develop a functionally identical system to PROMIS is so great that INSLAW has serious doubts as to whether the work can be accomplished in one year--even by a firm so intimately acquainted with PROMIS as SDSC. INSLAW seriously questions that any firm could develop an equivalent system during a year without access to PROMIS source code. Both DOJ employees and SDSC are likely to have access to this code during the period of development specified in the DOJ RFP.

specification, it would not have to rely so heavily on precisely-defined experience to insure contract performance. Similarly, the ability to propose off-the-shelf software would enhance competition for this requirement. There is no valid reason for excluding such software from consideration. Indeed, the restrictions in this RFP appear to be based not on any legitimate need of the Government, but on the Department of Justice's bias against INSLAW which has been judicially recognized on at least two occasions.

The Department of Justice simply cannot justify the extent to which it has restricted competition for this procurement. Such justifications are particularly difficult where, as here, the procurement is effectively restricted to a single source. When solicitations contain requirements that only one offeror can satisfy, or that favor one offeror, and such requirements are not clearly necessary to satisfy the agency's minimum needs, the procurement will be ruled an illegal de facto sole source. University Research Corp., B-216461, Feb. 19, 1985, 85-1 CPD ¶ 210. In University Research, the protester contended that AID's solicitation for performance of certain hospitality services was structured so that only the incumbent contractor could receive the award. GAO sustained the protest, finding that

---

INSLAW makes PROMIS source code available to all of its customers so that they can prepare custom adaptations. Although customer use of such source code is restricted by license, it is difficult for INSLAW to police all customers' compliance with the license terms. The US Bankruptcy Court has already ruled that the Department of Justice "converted INSLAW's privately-financed proprietary enhancements by trickery, fraud, and deceit...." In Re. Inslaw, Order dated January 25, 1988 at 2. This prior conduct, combined with the RFP's requirement to complete an enormous volume of code in an extremely short period raise the disturbing possibility that the DOJ 's purpose is not to develop PROMIS-like software, but to steal it.

the AID solicitation, while presented as a competitive procurement, was drafted to result in a "de facto sole-source award". Id. at 7.

Similarly, in Memorex Corp., B-213430, July 9, 1984, 84-2 CPD ¶ 22, GAO found that a procurement for data access storage devices contained requirements which were unduly restrictive because, taken together, only one firm could supply equipment to meet the requirements. The protester argued that requirements for new equipment and single density drives were not related to the government's needs, but instead inserted to restrict the competition to one vendor. GAO granted the protest, finding that the agency could not adequately justify the restrictive specifications.

Finally, in DSI, Incorporated, GSBCA 8568-P, September 22, 1986, 87-1 BCA ¶ 19,407, the GSBCA ordered cancellation of an RFP for a single vendor to supply brand-name computer hardware, applications software and maintenance services because it unlawfully restricted competition to the hardware manufacturer's entities and excluded third-party vendors. In DSI, the protester did not contest the make and model restriction, but claimed the single-vendor restriction unnecessarily precluded all third party vendors from competing. The Board agreed stating:

> We reject respondent's argument that it has obtained adequate competition. The question properly is whether it has obtained all the competition that is available, and the answer is that it has not. The CICA imposes a clear requirement that agencies undertake an affirmative effort to maximize competition.

Id. at 98,141.

In this case as well, the Department does not have any valid justification for the restrictions contained in its RFP. Accordingly, the Department must cancel its solicitation because it is unreasonably restrictive.

IV. THE RFP IS ALSO DEFECTIVE BECAUSE IT IS BASED ON FLAWED AND INADEQUATE MARKET RESEARCH.

DOJ's apparent disregard for the commercial product preferences expressed at FAR Part 11 may stem in part from its flawed assessment of available commercial case management systems. DOJ's "Requirements Study" for this procurement concluded that "none of the available commercial legal packages would meet the Land CMS requirements without substantial modification." This conclusion was reportedly made after review of several different case management software systems used commercially and by DOJ. However, the study makes no mention of INSLAW's PROMIS system which is not only widely used in the commercial marketplace, but installed in more than 40 U.S. Attorneys' Offices and the DOJ Lands Division. The authors of the study did not interview INSLAW, and apparently made no effort to determine the extent of PROMIS' relational capabilities.

Agencies are required by law to conduct acquisition planning, including "market research" in preparation for their procurements. 41 U.S.C. §253a(a)(1)(B); FAR 7.102, 10.002; FIRMR 201-11.003. The government's market research is to focus on determining the availability of

"commercial products" to satisfy the agency's minimum needs. FAR 11.004(a); FAR 10.001. Applicable regulations state in relevant part:

> Once the Government's needs have been functionally described, market research and analysis shall be conducted to ascertain the availability of commercial products to meet those needs...Market research and analysis involves obtaining the following information, as appropriate...The availability of products suitable, as is or with minor modification for meeting the need...

FAR 11.004.

The function of market research is to maximize competition for agency requirements. In TMS Building Maintenance, B-220588, Jan. 22, 1986, 86-1 CPD ¶ 68, GAO described the purpose of a market survey as follows:

> [It] is not to determine the cost benefits of contracting for services but, in accordance with the principle that agencies should achieve maximum competition, to determine if there are other qualified sources capable of meeting the government's needs.

Id. at 5.

Where agencies have failed to conduct adequate market research, resulting competitive restrictions will not be allowed. Jervis B. Webb Co., B-211724, 85-1 CPD ¶ 35 (1985) (lack of a market survey led, in part, to a finding that the agency's sole source justification was inadequate); International Systems Marketing, Inc., GSBCA 7948-P, June 19, 1985, 85-3 BCA ¶ 18,196 (brand name restrictions on modems found to be improper because agency failed to adequately assess other commercial options for fulfilling the agency's minimum needs). In sustaining the protest in International Systems Marketing, Inc., the GSBCA stated:

> [W]e conclude that respondent took little or no action to identify and to evaluate less restrictive methods of expressing its requirements for the command-driven external modems. Proper acquisition planning requires that these actions be accomplished before, and not after, a solicitation has been issued...No such analysis occurred here....

Id. at 91,355.

DOJ's acquisition planning is similarly flawed because it apparently made no effort to evaluate whether INSLAW's case management software could meet its needs. DOJ's curious omission of PROMIS from its market analysis calls into question whether its analysis was performed in good faith or was designed for competitive restrictions.

V. THE RFP IS DEFECTIVE DUE TO INCLUSION OF ERRONEOUS AND MISLEADING INFOMATION REGARDING DOJ'S OWNERSHIP OF ITS CURRENT CASE MANAGEMENT SOFTWARE

The RFP contains inaccurate and misleading information with regard to DOJ's ownership of the case management software it currently operates. In response to Vendor Question 46, DOJ stated that it owned the source code for all its systems and would make such information available to offerors. The primary system which DOJ uses is INSLAW's PROMIS software. However, INSLAW is the sole owner of all rights to the PROMIS versions now operating at DOJ. When INSLAW notified DOJ of the erroneous statement it had incorporated into the RFP, DOJ cavalierly claimed its statement applied only to the 1979 version of PROMIS software. However, this is not the current version of the PROMIS which DOJ now runs. And Question 46 specifically asked whether DOJ owns "source code

masquerading as a development effort. Indeed, the Department has even signaled a willingness to make source code available to assist vendors in performing this task. The Department's efforts to obtain case management software based on PROMIS exemplifies the type of conversion which it cannot perform according to DOJ's prior representations to GSA. For this reason alone, the DOJ RFP should be cancelled.

CONCLUSION

Based on the considerations set forth in this letter, INSLAW requests the Department of Justice to cancel the RFP, and issue a new solicitation which neither restricts competition, nor violates court orders. INSLAW reserves the right to bring this matter to the attention of the GSA Board of Contract Appeals if it is unable to obtain satisfactory relief from your office.

Sincerely,

David S. Cohen
Counsel for INSLAW, Inc.

EXHIBIT 1

REQUIREMENT	INSLAW CAPABILITY
Page C- 47	
A. DEPARTMENT GENERAL SYSTEM REQUIREMENTS	
The User must be able to perform the following tasks easily in an on-line mode: create a database; add, modify and delete a record; query the database; and format/print a report.	The INSLAW product provides add, modify, delete update functions. In addition, query functions are provided through the standard on-line inquiry program, PR4200, and through the FORMPAC subsystem. Output generators, including IBM's Query Management Facility (QMF) for the relational version and Generalized Inquiry Package (GIP) and Management Report Package (MRP) for the hierarchial version, are used to define and produce user-specific reports. Ability to create a database is provided through the tailoring software, DESIGN.
The User must be able to manage database elements easily, through an integrated data dictionary or an equivalent mechanism.	This is a tailoring feature of the DESIGN subsystem, in which user can define and organize the database definition.
The system must provide easy and integrated utilities and/or tools for data validation and checking during data entry and update.	The INSLAW product contains an edit facility, programs PR4400 and PR3400, to verify data entered into the database.
Page C- 48	
The system must provide utilities, error messages and other facilities for validation and optimization of database designs.	The DESIGN subsystem provides users with the capability to design the database and then edit the design for error and usage.

REQUIREMENT	INSLAW CAPABILITY
The system must provide for creation and growth of databases without unreasonable size restrictions.	Database size is a factor of the relational database manager product (i.e., DB2 or Oracle). In neither INSLAW's relational or hierarchial software version is there a limit on database size.
The system must provide the capability to build and maintain a database (or series of linked databases) that will contain, at a minimum, 75,000 records.	The INSLAW product has no restriction on the number of records in the database. The database manager, either IBM's DB2 or INSLAW's hierarchial version, provides the capability to build and maintain the database. DB2 provides the additional capability of linking databases.
The system must provide commands or management features for restructuring and reorganizing a database.	A companion product to the DESIGN/tailoring programs is the Database Adjustment module, which reformats an existing database to match the new database design.
The system must include utilities, error messages and other system facilities that advise users of the status of a database (e.g., the need for reorganization, the existence of a broken index chain or pointer, etc.).	This is not applicable to the relational technology. The PROMIS hierarchical version provides database utility programs PRUTB2 and PRUTB3 to identify and correct such problems in the files.
The system must provide integral security tools to control access to databases	The INSLAW product includes a Security subsystem to control user access, through recognition of terminal ID, user ID, and password. The latter parameter defines the level of access to the database.

REQUIREMENT	INSLAW CAPABILITY
The system must be capable of managing simultaneous multi-user access to a single database, including prevention of concurrent update of a single record.	The INSLAW product allows concurrent access to the database for an unlimited number of users. It does not currently prevent concurrent update of the same record. The required capability can be incorporated into PROMIS/DB2 in less than 30 days.

2. DEPARTMENT REPORTING REQUIREMENTS

The system must provide easy generation of queries and report formats. A user must have the ability to save report formats and queries for later execution.	With the INSLAW product, the user may inquire into the database using the standard on-line inquiry function or by user-defined on-line inquiries using FORMPAC. Batch reports can be defined and executed using FORMPAC and IBM's Query Management Facility (QMF), the DB2 output support tool. These definitions in FORMPAC and QMF are stored and extracted for use as needed.
The system must provide a complete array of arithmetic, date and data range, and Boolean search operations. An alphanumeric sort capability (including both ascending and descending sorts) must be integrated with system output functions.	All these capabilities are provided by QMF. The hierarchical version report products provide all but the Boolean search and some arithmetic operations.
The system must provide an output/report module with the capability to specify and construct reports with titles, column headers, and variable spacing. The output/report module must support column subtotals and totals, through a specific report function or mathematic capability.	These capabilities are provided in the FORMPAC subsystem and in IBM's QMF product for the relational software version. These capabilities are provided in the hierarchical version with the FORMPAC, GIP, and MRP modules.

REQUIREMENT	INSLAW CAPABILITY
The system must allow linking records from different logical data files for the purpose of generating reports.	This feature is provided by DB2 and QMF, since multiple database applications can be defined in DB2.
The system must be capable of extracting data and providing it to word processing software for creation of list/merge documents and special forms.	Depending on the content of the form, FORMPAC provides this capability to merge data and text. An extraction of data can be transferred to the word processing system for manipulation with a document.

3. LANDS DIVISION GENERAL SYSTEM REQUIREMENTS

The system database must include case tracking, timekeeping, and debt collection.	Case tracking and timekeeping are standard functions in INSLAW's MODULAW application produced by the PROMIS application generator. Debt Collection is a standard PROMIS function. Application can be designed using the DESIGN module and the relevant functional logic added to the database program, PR4810.
The software must operate at JDC.	The INSLAW PROMIS product currently operates at JDC. The relational version of the INSLAW product will meet the same requirements.
The system must have an on-line timesheet that can be prepared at the user's terminal.	This is a standard feature of the MODULAW application developed with SCREENPAC, INSLAW's screen design subsystem. Using SCREENPAC, the user can design special entry screens that match the workflow and data availability.

REQUIREME[redacted]	[redacted]LAW CAPABILITY
The system must be menu-driven for the less experienced users. However, a menu bypass will be available for frequent users.	All INSLAW application products contai this feature.
The system must be able to perform backward or forward paging, among a series of screens related to a transaction and/or a case, and to shift from a cross-reference index produced by a query to a case and return to the index or keep going from record to record selected by the query.	These inquiry features are a standard feature of the INSLAW products.

The system must be easily tailorable to accommodate the addition or deletion of data elements or records.	The DESIGN module allows the complete definition of the database, including fields and their edit criteria, records, the relationship records, and cross-references. These form the basis for the database; the user can further expand the database through the use of ad hoc SQL commands (e.g., to join multiple tables into one view) in the relational version.
At a minimum, the system must deny access to unauthorized users. This would include other Divisions that use the LINC network and persons who are not Lands employees. Within the Division, the common data elements should be available to all Lands users, but grand jury information should be protected against viewing by all sections.	This is a standard feature of the Security subsystem. If certain information is restricted, additional security can be defined for that information.

REQUIREMENT	INSLAW CAPABILITY
The system must allow for global or mass replace capability, i.e., attorney reassignments.	Global update programs for reassigning cases have been developed for INSLAW customers; these routines typically supply a closing date for the attorney assignment and create a record for the new attorney assignment.
Update of the files must be possible both from on-line entry and in batch.	The Batch Update package is a supplemental offering from INSLAW. Data can be entered into the database either through the on-line programs PR4300 and PRENM4 linking to PR4810 or through the Batch Update Module using the database program PR3810. In the relational version, programs PR4810 and PR3810 provide the link into DB2.
The system must have a user-defined help capability built into the system and to allow the user to display table values. If this feature is available, restricted access for updating the table is required.	Field Help is a standard INSLAW feature and displays field criteria and related coded values for that field. A Help feature is also provided for leading the user through the menu screens. Restricted access to translation (code) tables is handled through the Security package. Updates to these codes are not permitted through the Help feature, but through the update functions provided by programs PR4300 and PRENM4.
During the update and retrieval process, prompts (help screens) must be available to guide users. Commands to identify error messages, system malfunctions, or edits must be clearly understood. Code-oriented language should be avoided.	Help screens are a standard feature of the relational version of the software. The menu screens eliminate use of code-oriented language. Error messages are displayed to the user explaining the edit condition. These messages as they relate to database edits can be code values or literal messages.

REQUIREMENT	INSLAW CAPABILITY
The system must have provisions for retiring old cases and records to a history file. There must be a mechanism to return the cases and records on-line once they are retired to the historical file.	The Purge programs enable data to be transferred to a history/archive file; either no records or only a skeletal set of records will be retained in the on-lin database. The records to be purged and those to be left in the on-line database, plus the timeframe for purge eligibility are defined by the user. The program PRUTB4 allows addition of a case from the history file back to the on-line database.

The system must provide for relational edits on any data field. For example, the system must be able to check that, if a complaint is filed, a date or filing party is also entered.	The INSLAW products provide edits at field, related fields or database levels. Standard field edit (e.g., type, length, future date) are included in the edit programs, PR4400 and PR3400. The edits particular to the application are coded by a programmer and compiled into the program.
The system must be able to handle the manner in which Lands counts its cases and matters, with particular attention to tract consolidations and appellate processing.	The PROMIS system used by Lands, provides these capabilities. Logic such as this is coded specifically for each application and added to the database programs, PR4810 and PR3410. QMF can also be used to support the case and matter counts.
It is highly desirable that the system be able to respond to a user request to update or query the database within 5-10 seconds at most.	The INSLAW product typically has a 1-2 second response time. SCREENPAC updates may take longer depending on the volume of data to be added. Response time is closely tied to the configuration and size of the computer and the number of active applications and users on the system.

REQUIREMENT	INSLAW CAPABILITY
The system must provide a mechanism for automatic restart and recovery for both batch and on-line processing in the event of loss of data, network interruption of operations (system crash), or any other abnormal termination. Every precaution must be taken to assure that data are not lost.	Since DB2 is the database manager utilized by the INSLAW relational products, recovery and restart are provided by the product. On-line recovery is used in conjunction with CICS, the teleprocessing monitor. The hierarchical version provides its own recovery procedures.
A usage monitor that can be turned on or off during systems operation is desirable for analyzing system usage for optimizing the design. It should gather statistics on how many records and which record types are being accessed or updated by which terminals and how often certain reports are generated.	The INSLAW product includes program PRUTB2 which provides counts by record type, so database growth and activity can be monitored. A log file provides an audit of all on-line updates and, optionally, inquiries. Reports can be written to provide statistics specific to the user's needs. CICS also provides usage information at the transaction and file levels.

The system must contain or be able to access easily some type of text retrieval software.	This feature is currently available in the relational version of the INSLAW software products and will be available in PROMIS/DB2.

4. LANDS DIVISION REPORTING REQUIREMENTS

It must be possible to view on-line the entire case history of a particular case from the time it is opened until it is completed. Access through a specific case will be through DOJ case numbers.	This is a standard inquiry feature in the INSLAW product. The user can specify an inquiry on any type of record. If this inquiry is at the case level, all records related to that case are presented in the inquiry.

REQUIREMENT	MODULAW CAPABILITY
It must be possible to view on-line certain segments of a case, i.e., attorney assignments, filings, dispositions, etc.	The user designates the specific type inquiry to be provided by program PR4200. A specific record can also b retrieved by its key value. A FORMPA inquiry can also be defined for a more concise inquiry.
The system must be capable of allowing on-line design of specially-tailored screens and forms.	This is a standard feature of the SCREENPAC and FORMPAC subsystems.
The system must have some type of simple graphics.	Graphic support would be provided through the current products Lands no has, Menutrend and Trendview.
The system must have some type of statistical reporting capabilities, so that SAS-type reports can be generated.	This is a standard capability available through QMF in the relational version o the software; it is available through the MRP report package in hierarchical version.
The system must have the ability to generate and print standard reports in the sections.	FORMPAC and QMF can be used to define section-specific reports. On-line case-related and FORMPAC inquiries ca be directed to specific printers. Likewise, a printer designation can be defined in a QMF report.
The system must have the capability to retrieve hard copies of timesheets from previous months or fiscal years; a storage capability must be designed for the timesheets.	Storage and on-line retrieval of time information is a standard feature of the MODULAW application. The format for the retrieval can be defined with the FORMPAC package.

REQUIREMENT	INSLAW CAPABILITY
Options to specify both field truncation and field wrapping within print columns are desirable for reports.	QMF provides this capability. The hierarchical versions of the INSLAW software provided field truncation using subfield definitions in the Generalized Inquiry package.
The system must have a common language suitable for a trained lay person to use in generating reports.	This is a standard aspect of packages, whether INSLAW or other vendor provided.
The system must be able to count recurring values in records. For example, how many briefs were filed per case, per section, per fiscal year, per judicial district, etc.	This is a standard feature provided by the report packages.
The system must allow display of multiple record types on a screen as well as in a report format. For example, if for any given case all settlement information is requested, the system will display both general case information and various records associated with the settlement history.	This is a standard INSLAW inquiry capability. In addition, specially formatted screens can be designed with the FORMPAC subsystem.
The system must be able to identify and count null values, i.e., instances where no briefs were filed or instances where information is not available in the system (cases with no priorities), or instances where no record has been entered (cases with no attorney records).	This is a standard feature of QMF, based on the selection criteria defined by the user for a report. The Generalized Inquiry Package in the hierarchical PROMIS product also provides this capability.
The system must be able to sort on any data element and to total on any decimal and numeric fields. The ability to customize a sort ascending/descending is required.	This is a standard feature of QMF, based on the selection criteria defined by the user for his report. The Generalized Inquiry Package in the hierarchical PROMIS product also provides this capability.

REQUIREMENT	INSLAW CAPABILITY
The system must be able to identify shared cases (between Assistant United States Attorneys and the Division, and between Divisions).	This is a standard feature of the MODULAW application, allowing multiple attorney assignments for a case. The Government Rep record in Lands PROMIS provides this information. This definition can be tailored into the database design using the DESIGN module.
The system must provide the capability to capture the number of cases pending (active) during a particular time frame.	This is a standard feature available through the report packages and on-line cross-references defined in the application.
The system must be able to age cases by various stages of litigation. Because the new system will combine case tracking and timekeeping functions, the system must generate/identify cases that are resource intensive.	This is a standard feature in the INSLAW applications and is based on Docket entries. Standard report packages can flag resource intensive cases based on user-defined criteria.
The system must provide case specific information for terminal viewing and report retrieval such as: - cases opened and closed during a fiscal or calendar year; - number of trials versus number of settlements during a fiscal or calendar year; - number of cases on appeal and how many times it has been appealed; - information by statute, status, priority, district/court, opposition, agencies, etc.' - number of fines, penalties, judgments, settlements, outcomes, and amounts; - number of criminal cases versus civil cases and defensive cases versus affirmative cases; - comparisons between claims and awards.	This is a standard capability of the relational and hierarchical report packages or on-line inquiry. The INSLAW product also allows for the definition of summary fields that calculate counts, case status, etc., within a case. This feature provides even more relevant data during an inquiry.

Exhibit D

Exhibit D

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

IN RE INSLAW, INC., Debtor-in-Possession	Bankruptcy Case No. 85-0070 Judge James F. Schneider
INSLAW, INC., Plaintiff, v. UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	Adversary Proceeding No. 86-0069

DECLARATION OF KIER T. BOYD

1. My name is Kier T. Boyd. I am the Deputy Assistant Director, Technical Services Division, Federal Bureau of Investigation.

2. I am making this declaration in accordance with the provisions of 28 U.S.C. §1746 and in response to statements made in Inslaw Inc.'s February 7, 1991 Supplemental Submission In Support Of Motion For Leave To Take Limited Discovery ("Supplemental Submission") and in the February 18, 1991 Second Supplemental Submission Of Inslaw In Support Of Its Motion To Take Limited Discovery ("Second Supplemental Submission") respecting a) a letter which I sent Terry D. Miller on January 25, 1991, in response to a letter which Mr. Miller had written to the Director of the FBI on January 9, 1991 and b) a letter which I sent Mr. Miller on February 11, 1991, responding to letters which he had sent to me and to the Director on February 5, 1991.

EXHIBIT B

Copies of Mr. Miller's letter of January 9, 1991, and my January 25, 1991 reply are attached as Exhibit B to the Supplemental Submission; copies of Mr. Miller's letters of February 5, 1991, and my February 11, 1991 reply are attached as Exhibit C to the Second Supplemental Submission.

3. I am informed by counsel for the Department of Justice that Inslaw offers my letters as evidence that the Department violated an injunction entered by this Court on January 25, 1988, which, among other things, enjoins the Department:

> from any further expansion of the use of INSLAW's proprietary enhancements in any office in which DOJ does not currently utilize the enhanced version of PROMIS

4. Mr. Miller's letter of January 9, 1991, to the Director states in part:

> I Have [sic] reason to believe that the software that your agency uses throughout the U.S. -FOIMS- is stolen.

The letter does not mention PROMIS nor does it give any specifics whatsoever respecting this sweeping allegation. It does not, for example, state from whom the FOIMS software was allegedly stolen, when it was allegedly stolen, and whether he believes that all, or only a portion, of FOIMS was stolen.

5. My January 25, 1991 reply to Mr. Miller seeks these and other details respecting his claim.

6. Mr. Miller's letters of February 5, 1991, do not provide the requested details. Instead, they characterize my reply as "defensive", state that I am not "independent", and conclude that I am not the "appropriate point of contact on this matter."

7. After receiving Mr. Miller's letter of February 5, I learned that he is a friend of Mr. Hamilton, and it seems obvious that he is attempting by his letters to aid Mr. Hamilton in this litigation. Offering my January 25, 1991 letter to Mr. Miller in support of the proposition that the FBI is or may be using PROMIS software is, in my judgment, totally unwarranted because nothing in Mr. Miller's letter of January 9, 1991 (to which my January 25 letter responds) indicates that PROMIS software is the subject of his inquiry. Neither through Mr. Miller's letter nor any collateral information in my possession was I aware, at that time, of a connection between Mr. Miller's inquiry and the Inslaw case. Upon receipt of Mr. Miller's February 5 letter, I resolved to cease efforts to cooperate with him and decided to deal, instead, with the court having jurisdiction over that case.

8. Accordingly, my February 11, 1991 letter informs Mr. Miller that this Court is the appropriate forum for adjudicating the issues between the proper parties. Contrary to the assertion made in Inslaw's Second Supplemental Submission, the FBI is both able and willing to address the issue of PROMIS software, but not with a third party operating outside the boundaries of the litigation.

9. Referring to my first letter to Mr. Miller, Inslaw's Supplemental Submission asserts:

> What is significant about this reply is that it does <u>not</u> deny the allegation. [emphasis in original]

10. Referring to both of my letters to Mr. Miller, the Second Supplemental Submission states:

> Mr. Boyd makes it clear that the FBI now is unable or unwilling to provide assurances that pirated software is not included in the case management information system used by FBI field offices, i.e., in the FBI's FOIMS (Field Office Information Management System).

11. I would like to make two responses to these assertions. First, the implication that my failure to deny Mr. Miller's unsupported allegations should in any way be taken as evidence that the allegations are true is unwarranted. I asked Mr. Miller for additional information simply because I believed that was the most sensible and courteous way in which to resolve his vague and unsubstantiated allegations. I have absolutely no reason whatsoever to believe that any portion of FOIMS was stolen.

12. Second, since learning of Inslaw's assertion respecting PROMIS, I have reviewed the matter with the FBI staff responsible for the development of FOIMS from September 1977 to the present. On the basis of that review, I can state that a) the FBI does not use, nor has it ever used, the enhanced version (or any other version) of PROMIS and that b) FOIMS was developed entirely by the FBI in-house; it is not based on and does not contain the enhanced version (or any other version) of PROMIS -- or any portion thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 1991.

KIER T. BOYD

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ AIRTEL

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 12/2/91

TO : Director, FBI (194-10819)

FROM : SAC, Washington Field Office (211-WF-177098) (P)

SUBJECT : INSLAW, Incorporated
Washington, D.C.
Ethics in Government Act
(OO:WMFO)

Re Buairtel, 10/17/91.

Attached for FBIHQ are two copies of a self-explanatory FD-302 with attachments documenting interviews with former U.S. Attorney General (AG) ELLIOT L. RICHARDSON concerning captioned matter on 11/7/91 and 11/13/91. b6 b7C

On 11/6/91, SA [redacted] WMFO case agent, met with Public Integrity Section (PIS) Deputy Chief JAMES A. COLE and PIS attorney [redacted] in preparation for the 11/7/91 interview of AG RICHARDSON. SA [redacted] was provided with a limited overview of allegations and court decisions concerning the INSLAW matter. Deputy Chief COLE requested that results of interview with AG RICHARDSON be documented in a detailed FD-302 and provided to PIS.

2-FBIHQ (Enc.2 with attachments)
2-WMFO (Enc.2 with attachments)
WMM/wmm

Copies of 302s Hand Delivered to PIS

211-WF-177098-5

SEARCHED INDEXED
SERIALIZED FILED

Approved: _____ **Transmitted** _____ **Per** _____
(Number) (Time)

As noted in the attached FD-302, due to AG RICHARDSON's schedule, it was necessary to conduct the interview in two meetings on 11/7 & 13/91. AG RICHARDSON concluded the interview on 11/13/91 by noting that he would prepare additional material for inclusion in the report prepared by the interviewing agents to the Department of Justice (DOJ). AG RICHARDSON wanted to insure this additional information was taken into consideration by DOJ when making a final decision concerning the investigation of INSLAW and related matters. AG RICHARDSON requested additional time to prepare this material. During this meeting, neither AG RICHARDSON nor the interviewing agents were aware of U.S. Attorney General WILLIAM BARR's appointment of retired Federal Judge NICHOLAS J. BUA as Special Counsel to investigate the INSLAW matter.

On 11/22/91, SA [redacted] recontacted AG RICHARDSON concerning the appointment of Judge BUA and AG RICHARDSON's additional material. AG RICHARDSON advised he spoke with Judge BUA concerning the FBI interview and the additional material. In light of Judge BUA's appointment as Special Counsel in the INSLAW matter, AG RICHARDSON sought guidance from Judge BUA regarding the additional material AG RICHARDSON planned to provide to the FBI. Judge BUA instructed AG RICHARDSON to provide the additional material to the FBI as planned.

b6
b7C

WMFO will maintain contact with AG RICHARDSON concerning captioned matter. The additional information from AG RICHARDSON is expected within the next two weeks.

Copies of the RICHARDSON FD-302 with attachments are being furnished by WMFO to PIS.

Memorandum

To : SAC, WMFO (211-WF-177098) (P) Date 1/8/92

From : SA [redacted] (C-9)

b6
b7C

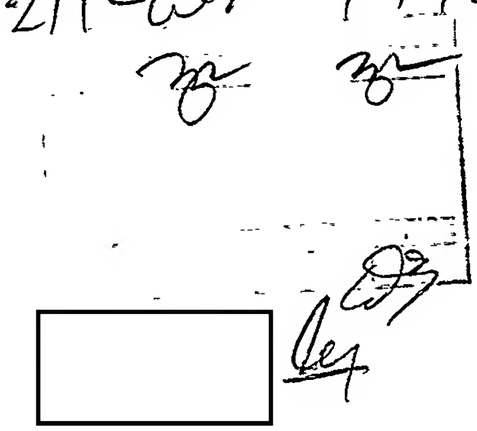
Subject: INSLAW, Incorporated,
Washington, D.C.,
EIGA
(OO:WMFO)

In view of information being developed concerning this matter by a source assigned to SA [redacted] (C-9), it is requested sub file "I" be opened to act as a repository for information provided by this source.

2-File
(1) 1-211-WF-177098 (Main File)
1-211-WF=177098 (Sub I)
WMM/wmm

211-WF-177098-6

211-WF-177098-7



b6
b7C

December 30, 1991

[redacted] b6 b7C

SSA [redacted]

Honorable Robert L. Livingston
House of Representatives
Washington, D.C. 20515-1801

Dear Congressman Livingston:

This is in further response to your November 12th communication on behalf of [redacted] b6 b7C wrote to you concerning the need to investigate allegations of a cover-up of the facts involving the death of Danny Casolaro.

Our Pittsburgh Office has advised that the Martinsburg, West Virginia, City Police Department (MCPD) is investigating the death of Danny Casolaro, who was found dead in a room at the Sheraton Inn in Martinsburg, West Virginia, on August 10, 1991, the victim of an apparent suicide. The investigation to date has revealed nothing to indicate a violation of Federal law within the investigative jurisdiction of the FBI. The services of the FBI Laboratory and Identification Divisions have been offered to the MCPD, and any information concerning the death of Danny Casolaro which comes to the attention of the FBI will be immediately disseminated to that Department.

I hope this information will be of assistance to you in replying to your constituent's inquiry.

Sincerely yours,

Fred B. Verinder
Deputy Assistant Director
Criminal Investigative Division

1 - Pittsburgh - Enclosures (3)
ReBucal 12-6-91 from [redacted], OPA, to SSRA [redacted], Martinsburg RA, and return call 12-9-91. b6 b7C
(1) - WMFO - Enclosures (3)

ROBERT L. LIVINGSTON
1ST DISTRICT, LOUISIANA

APPROPRIATIONS COMMITTEE
SUBCOMMITTEES:
DEFENSE
FOREIGN OPERATIONS

HOUSE ADMINISTRATION
COMMITTEE

WASHINGTON OFFICE:
ROOM 2368
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1801
(202) 225-3015

DISTRICT OFFICE:
111 VETERANS BLVD.
SUITE 700
METAIRIE, LA 70005
(504) 589-2753

Congress of the United States
House of Representatives
Washington, DC 20515-1801

November 12, 1991

Mr. John Hooks
Legislative Counsel
Federal Bureau of Investigation
Congressional Affairs Office, #7240
10th & Pennsylvania, NW
Washington, D.C. 20535

Dear Mr. Hooks:

Enclosed please find communication I have recently received from one of my constituents for your consideration. I would greatly appreciate your complying with their request, if possible.

I would appreciate your advising me of your action in this matter and return the letters to me with your reply to my Washington office.

Sincerely,

ROBERT L. LIVINGSTON
Member of Congress

RLL/ds

Enclosure

DEFENSE

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

Congress of the United States
House of Representatives
Washington, DC 20515

SEP 03 1991

b6
b7C

CONSTITUENT'S VIEWS

NAME: [redacted]

ADDRESS [redacted]
Slidell LA 70458

DATE: 8/30/91

PHONE: _____

RE: _____

VIEWS: I read in the paper this morning about the cover-up of the death of this investigative reporter + Castellaw. I would really like for the Congressman to look into this - it really sounds like a cover-up.

TAKEN BY _____

REFERRED BY PHONE TO _____

589-2607

SLUG-FORRICK ,00 BY-WED ,0" H&J-n RET-n FIL-y PAGE- ED-DEC02 *
DESK-EJB NEXT- PROOF-n SET-n KILL-n PRIO-s 04:56 PM

TOP OF STORY 08/30/91
tp91 INSLAW CASE: THE SMELL GETS WORSE

Friday, August 30, 1991

EDITION: THIRD LENGTH: Medium: 88 lines
SECTION: METRO PAGE: B7
HEADLINE: INSLAW CASE: THE SMELL GETS WORSE
BYLINE: By JAMES J. KILPATRICK
COLUMN: JAMES J. KILPATRICK
TYPE: OPINION
DATELINE: WASHINGTON
TEXT:

Some months ago, writing about the Inslaw case, I said the affair was beginning to stink to high heaven. With the death of Danny Casolaro, a free-lance investigative reporter, the stench grows worse.

Temporarily, the verdict seems to be that Casolaro killed himself in a Martinsburg, W.Va., hotel room two weeks ago. No one who knew him accepts that explanation. He was an outgoing, talkative, vital person; he was on top of a major break in a story he had been pursuing for eight years; he was headed for a family party. Everything about the story rings falsely.

Casolaro was not well-known within the Washington press corps, but editors who did know him have described him as a dogged reporter who would not leave the trail of a good story. In investigating the Inslaw case, Casolaro was on to the best story of his life. He had a book in the making.

I have been writing about the Inslaw case off and on for the past two years. It involves the scandalous treatment of Bill Hamilton, a Washington inventor and computer expert. His company, known as Inslaw, developed a software program known as Promis. It worked so superbly that he sold it to the Department of Justice for use in tracking the flow of court cases through the offices of U.S. attorneys.

It was a big contract for a tiny firm, but Hamilton's jubilation was short-lived. Officials at the Department of Justice, including a former Inslaw employee whom Hamilton had fired, suddenly began finding petty objections to the contract. The department withheld payments. Driven into bankruptcy court, Inslaw fought back. A bankruptcy judge, after prolonged hearings, ruled flatly that the government had ''stolen'' Promis through ''trickery, fraud and deceit.'' That judgment was upheld on appeal to a federal district court.

All this happened while Ed Meese was attorney general. Meese has denied any personal involvement, but officials under him launched a cover-up that continues to this day. Under Attorney General Dick Thornburgh, the department resisted an impartial investigation at every step. When a Senate subcommittee attempted to look into the affair, the department stonewalled. When a House committee tried its hand, Thornburgh refused to testify.

Something stinks. Promis was sold exclusively to the U.S. Department of Justice, but the program has turned up in Canada and in various nations in Europe. Someone is marketing stolen goods.

There is reason to believe that Danny Casolaro went to Martinsburg to crack the case. He had told friends that Inslaw was part of an ''octopus'' of criminal activities in high places, including the BCCI and the savings and

loan scandals.

Hamilton and other friends of Casolaro have tried to reconstruct his las hours. They are convinced the suicide was faked. They see murder.

On the night of Monday, Aug. 5, Casolaro spoke by telephone with three separate confidents. He told them he had just returned from interviewing a source in West Virginia. He now knew the Inslaw story, but he would have to back to Martinsburg to wrap it up.

Casolaro drove back to West Virginia on Thursday, Aug. 8, and checked in Room 517 at the Sheraton Hotel. On Friday evening he telephoned his mother northern Virginia to say he would be late in getting back for a family birthday party, but he was headed home.

About 1 o'clock on Saturday the 10th, hotel maids found Casolaro's body a bloody bathtub. Reports of the circumstances are both sketchy and conflicting. Reportedly there were crude slash marks on each arm. Arteries been severed. By one account Casolaro had used a broken beer bottle; by another account, a broken glass. In a third account, we read that a razor blade was found beneath his body. Casolaro's brother, a surgeon, said he n could get Danny to have a physical examination because Danny wouldn't let finger be pricked for a blood sample. Without permission from anyone, West Virginia officials ordered Casolaro's body speedily embalmed.

There was a note: ''I'm sorry, especially to my son.'' Casolaro was a novelist and a writer of short stories. Associates say he had a florid sty The note, if authentic, seems completely out of character. Casolaro was kn to carry stacks of manila folders with him. Police said there were no pape in his room or in his car. A witness says he met with Casolaro about 4 o'c Friday afternoon, and the reporter had the folders at that time. The witn gave Casolaro certain documents unrelated to the Inslaw case. The document have disappeared.

Former Attorney General Elliot Richardson, Inslaw's chief counsel, has asked the FBI for a full-blown investigation. Under the circumstances, not less could suffice.

James J. Kilpatrick is a syndicated columnist.

ILLUSTRATION:
Danny Casolaro
Murder or suicide?

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 5/4/92

TO : SAC, CHICAGO
ATTN: SA [redacted]

FROM : SAC, WMFO (211-WF-177098) (P)

b6
b7C

SUBJECT : INSLAW INCORPORATED,
WASHINGTON, D.C.;
ETHICS IN GOVERNMENT ACT OF 1978;
(OO: WMFO)

On 4/23/92, Chicago case agent reviewed WMFO file 74-330, captioned [redacted] aka; ETAL; PERJURY; OO;WMFO". Enclosed for Chicago under separate cover are copies of the following documents which were identified during this review:

74-330, Volume 5
74-330, Volume 4 ([redacted] Interview)
74-330-G, Volume 1 ([redacted] Testimony)
74-330-I, Volume 1 ([redacted] Deposition and Digest of Trial Testimony)
74-330-D, Volume 1 (Newspaper Article)
74-330-I, ([redacted] Memo and OPR Report)

ADMINISTRATIVE

Per a recent telcall from FBIHQ, WMFO was advised that Chicago was being designated office of origin in captioned matter and WMFO should conduct future investigation as directed by Chicago in an auxiliary office capacity. WMFO has not received official written notice of this and, therefore, is submitting this communication under its original

3 - Chicago (Enc. 5)
1 - WMFO
DEB:les
(4)

211-WF177098-8

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

file number. WMFO will change title upon receipt of FBIHQ airtel or future requests from Chicago. Although no investigation is currently outstanding, WMFO will maintain this matter in a pending status in anticipation of future leads from Chicago.

C-9

0123 MRI 01107

RR FBIWMFO

DE RUCNFB #0090 1322251

ZNR UUUUU

R 111942Z MAY 92

FM DIRECTOR FBI

TO FBI WMFO/ROUTINE/

BT

UNCLAS

CITE: //0622//

SUBJECT: (CHANGED) INSLAW; [redacted] ET AL; PERJURY; MAJOR CASE 51; OO: CHICAGO. b6 b7C

TITLE MARKED "CHANGED" TO REFLECT ADDITION OF "INSLAW" TO TITLE, TO DESIGNATE CHICAGO AS OFFICE OF ORIGIN, AND TO REFLECT CASE DESIGNATION AS MAJOR CASE 51. TITLE PREVIOUSLY CARRIED AS [redacted] ET AL; PERJURY; OO: WMFO." b6 b7C

FOR INFORMATION OF RECEIVING OFFICES, INSLAW, A SMALL WASHINGTON, D.C., COMPUTER SOFTWARE COMPANY, HAS BEEN INVOLVED IN AN ON-GOING LEGAL DISPUTE WITH THE DEPARTMENT OF JUSTICE (DOJ). IN MARCH, 1982, INSLAW SIGNED A $9.9 MILLION CONTRACT WITH THE

[redacted]

Clerk 6/4/92

Note change Title changing OO! 6/4/92

[redacted] b6 b7C

MAY 11 7

211-CA-177098-9

SEARCHED INDEXED SERIALIZED FILED

MAY 12 1992

FBI — WASH. METRO FIELD OFFICE

GOVERNMENT TO INSTALL A COMPUTER SOFTWARE PROGRAM IN 94 U.S. ATTORNEY'S OFFICES. INSLAW HAD CREATED THE PROGRAM TO ENABLE PROSECUTERS TO EFFICIENTLY TRACK THEIR CASES.

IN JULY, 1983, FACED WITH COMPLAINTS ABOUT INSLAW FROM DOJ AND U.S. ATTORNEY OFFICES, DOJ BEGAN SUSPENDING CONTRACT PAYMENTS. IN FEBRUARY, 1984, DOJ TERMINATED A PORTION OF INSLAW'S CONTRACT DUE TO DELAYS IN THE SYSTEMS-INSTALLATION SCHEDULE.

IN FEBRUARY, 1985, INSLAW FILED FOR RE-ORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY LAWS. IN JULY, 1986, INSLAW SUED THE U.S. GOVERNMENT, ALLEGING THAT TOP OFFICIALS OF THE DOJ, INCLUDING THEN ATTORNEY GENERAL EDWIN MEESE, HAD CONSPIRED TO FORCE INSLAW INTO BANKRUPTCY BY APPROPRIATING ITS (INSLAW'S) PROPRIETARY SOFTWARE.

A BANKRUPTCY JUDGE HAS SINCE RULED IN FAVOR OF INSLAW, FINDING THAT THE DOJ "TOOK, CONVERTED AND STOLE" INSLAW'S PROPERTY BY "TRICKERY, FRAUD AND DECEIT." THE U.S. DISTRICT COURT UPHELD THAT FINDING, AND ORDERED THE GOVERNMENT TO PAY INSLAW APPROXIMATELY $7 MILLION IN DAMAGES, AND $1 MILLION IN ATTORNEY FEES. [illegible] DOJ FILED AN APPEAL OF THE JUDGEMENT.

ATTORNEY'S REPRESENTING INSLAW HAVE REPEATEDLY REQUESTED THAT THE GOVERNMENT APPOINT A SPECIAL PROSECUTOR TO ADDRESS THIS MATTER, DUE TO THEIR PERCEPTION OF THE DOJ'S APPARENT CONFLICT OF INTEREST.

ON 11/13/91, ATTORNEY GENERAL WILLIAM P. BARR APPOINTED THE HONORABLE NICHOLAS J. BUA, A RETIRED U.S. DISTRICT COURT JUDGE, AS SPECIAL COUNSEL TO ADDRESS CAPTIONED MATTER. JUDGE BUA SUBSEQUENTLY ELECTED TO CONDUCT THIS INVESTIGATION FROM HIS CHICAGO OFFICE. ACCORDINGLY, HE REQUESTED THAT THE CHICAGO FBI DIVISION DETAIL SPECIAL AGENTS TO THIS CASE. THE CHICAGO DIVISION THEREAFTER ASSIGNED SEVERAL AGENTS TO ASSIST WITH THE "INSLAW" INVESTIGATION.

THE CHICAGO DIVISION IS THEREFORE BEING DESIGNATED AS OFFICE OF ORIGIN IN THIS MATTER.

BT

#0090

NNNN

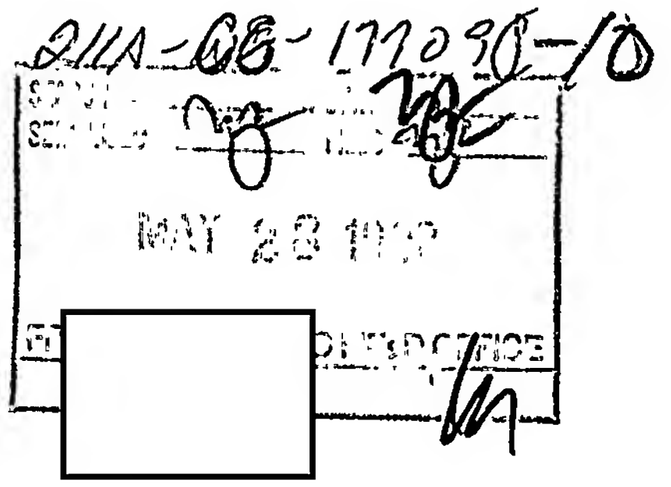
WMFO 211A-WF- 177098
CW/cw
1

On [redacted] advised SA [redacted] b6 b7C b7D as Follows:

[redacted](ph.) assigned to the House Judiciary Committee (HJC) investigating the EAGLE procurement routinely failed to follow-up on investgative leads provided by the source [redacted] Additionally, new leads developed were not persued and in some cases were destroyed or conveniently lost when qeried as to there disposition.

Source initially attributed the problems to either ineptitude or laziness but later became suspicious when [redacted] b6 b7C b7D began to ask probing questions and where the source was acquirering the information. On one occasion, [redacted] requested information which he stated was requested by [redacted] which the source later determined was untrue. Information regarding connections between project EAGLE and possible involvement with BCCI(The Kuwait Govt. and LLoyd Bengston Trust owned a 20% interest in Network Systems which was Tysoft's teaming partner and which exersized outstanding warrants after tysoft won the award) and other U.S. Government officials which [redacted] asked be provided to [redacted] were not followed up.

Lead information was provided to the Committee from [redacted] and on several occassions [redacted] asked for [redacted] source attempted to contact [redacted] said he would pass on the message and his only response was to ask [redacted] later acknowledged that he was never advised by [redacted] b6 b7C b7D



FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ AIRTEL

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 7/16/92

TO : SAC, WMFO (74-CG-86438)
(ATTN: SSA [redacted]

FROM : SAC, CHICAGO (74-CG-86438)

SUBJECT : INSLAW;
[redacted]
ET AL,
PERJURY
MAJOR CASE 51
OO: CHICAGO

Re Chicago telephone call to SSA [redacted] on July 16, 1992 and subsequent facsimile.

Enclosed for WMFO is the original and one copy of a Federal Grand Jury (FGJ) subpoena to be served on [redacted] for an appearance before the FGJ in Chicago, Illinois on [redacted]

For information of WMFO, [redacted]

b3
b6
b7C

2-WMFO (Encl. 2)
1-Chicago
KJD/rml
(3)

-10X1

211-CG-177098
~~74-CG-86438~~

Approved: _____ **Transmitted** _____ **Per** _____
(Number) (Time)

74-CG-86438

LEADS:

AT WMFO

AT [redacted]

Will serve enclosed FGJ Subpoena on [redacted] telephone number [redacted]

b3
b6
b7C

211-CG-177098-11

Per Telcall 11-30-92
From SA [redacted] CAS,
Discontinue.
Lead will be
covered by CAS
via Telcall.

b6
b7C

FEDERAL BUREAU OF INVESTIGATION

CHICAGO NORTH RESIDENT AGENCY
121 South Wilke Road, Suite 305
Arlington Heights, Illinois 60005
(708)253-9690
(Fax) (708)253-9986

Date: 11/30/92 Time: 903

CLASSIFICATION:	PRECEDENCE:
~~TOP SECRET~~	IMMEDIATE
~~SECRET~~	PRIORITY
~~CONFIDENTIAL~~	✓ ROUTINE
UNCLAS EFTO	
✓ UNCLAS	

TO: SAC, WMFO

ATTENTION: SA [redacted] CO

FAX NUMBER: [redacted]

FROM: SAC CHICAGO

SUBJECT:

VISLAW

INSTRUCTIONS:

b6
b7C

Pages Sent (including cover page): 3

Approved:

FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 11/27/92

TO : SAC, WMFO (74-CG-86438)

FROM : SAC, CHICAGO (74-CG-86438)

SUBJECT : INSLAW;
[redacted]
ET AL;
PERJURY - MAJOR CASE 51;
OO: CHICAGO

b6
b7C

Re Chicago telephone call to WMFO, date 11/25/92.

For information of WMFO, information has been obtained from [redacted]

indicating that PROMIS computer software was furnished to [redacted] INSLAW by [redacted] which had developed PROMIS (Prosecutors Management Information Systems) had a contract in late 1981 with the U.S. DEPARTMENT OF JUSTICE (DOJ). Allegations have been made by [redacted] of INSLAW, that top officials at DOJ conspired to have INSLAW liquidated in bankruptcy proceedings in order that [redacted] a close associate of former U.S. Attorney General EDWIN MEESE, could obtain PROMIS Software. At that time, [redacted] was a principal investor in HADRON which is a computer software company located in Fairfax, Virginia. Information received from [redacted] appeared to corroborate these allegations.

b6
b7C
b7D

2-WMFO
2-Chicago
KJD/rml
(4)

Approved: _____ Transmitted _____ (Number) (Time) Per _____

74-86438

On [redacted] appeared before the Federal Grand Jury (FGJ), Chicago, Illinois, [redacted] b3 b6 b7C

BEN-MENASHE alleges in his recently published book "PROFITS OF WAR" that ROBERT MACFARLANE was recruited by RAFI EITAN of Israeli Intelligence to provide information obtained from his position at the NATIONAL SECURITY COUNCIL (NSC). EITAN was the control agent for JONATHAN POLLARD. In response to these allegations, MACFARLANE has filed a civil law suit charging BEN-MENASHE with liable. [redacted] agreed to be interviewed by the FBI and Assistant United States Attorney (AUSA) [redacted] in Washington, D.C. on December 1, 1992. b6 b7C

LEADS:

WMFO DIVISION

AT WASHINGTON, D.C.

Will interview [redacted] in the office of his attorney, [redacted] Washington, D.C., telephone number [redacted] b6 b7C

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription [redacted] b3

[redacted] served a federal grand jury subpoena b3
in the second floor reception room of the FEDERAL BUREAU OF b6
INVESTIGATION in Falls Church, Virginia, on [redacted] by SA b7C
[redacted] at approximately 12:15 pm. [redacted] instructed to
contact AUSA [redacted] should he have any questions regarding the
subpoena and thereafter he departed.

Investigation on [redacted] at FALLS CHURCH, VIRGINIA File # CG-86438-12 b3

by SA [redacted] b6 b7C Date dictated [redacted] b3

RETURN OF SERVICE(1)

RECEIVED BY SERVER	☐	PLACE FBI, NVMRA OFFICE, FALLS CHURCH, VIRGINIA 22043
SERVED	☐	PLACE NVMRA, Reception Room, Falls Church, VA.

SERVED ON (NAME)

SERVED BY

TITLE Special Agent, FBI

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER(2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

7795 Lee Hwy Pl. Falls Church, Virginia
Address of Server

ADDITIONAL INFORMATION

211-CG-177098-13

b3
b6
b7C

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ AIRTEL

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 2/12/93

TO : SAC, CHICAGO

FROM : SAC, WMFO (74-CG-86438) (~~RUC~~)

SUBJECT : INSLAW;
[redacted]
ET AL,
PERJURY
MAJOR CASE 51
OO: CHICAGO

b6
b7C

Re Chicago airtel to WMFO, dated 7/16/92

Enclosed for Chicago is the original Federal Grand Jury Subpoena which was served on [redacted] at the receptionists desk at the Washington Metropolitan Field Office Resident Agency in Falls Church, Virginia. Also enclosed is the an original and copy of the accompanying FD-302.

b3
b6
b7C

[redacted] presented a copy of the above described subpoena when he arrived promptly at the RA on [redacted] He read the subpoena and departed with no comment.

WMFO will consider this matter RUC'd.

2-CG (Encl. 3)
1-WMFO
/CW
(3)

Anticipate additional leads from Chicago -

211-CG-177078-44
~~74-CG-86438~~

[redacted]

b6
b7C

Approved: _____ **Transmitted** _____ **Per** _____
(Number) (Time)

FD-36 (Rev. 8-29-85)

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ AIRTEL

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 4/26/93

TO : SAC, CHICAGO

FROM : SAC, WMFO (211-CG-177098) (RUC)

SUBJECT : INSLAW; [redacted] b6 b7C
ETAL, PERJURY; MAJOR CASE 51
OO:CHICAGO

Captioned matter has remained in pending status as it was anticipated that additional leads might be forthcoming. As no additional leads are currently anticipated, WMFO is placing this matter in RUC status.

2 - Chicago
1 - WMFO
DEB:les
(3)

RUC
6
4-26-93
DS 5/5/93

211-CG-177098-15

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____

Approved: _____ **Transmitted** _____ **Per** _____
(Number) (Time)